

IN THE SUPREME COURT OF OHIO

ORIGINAL

Ana Lisa Ricks

Case No. 10-0685

Relator,

vs.

The Common Pleas Court
Of Montgomery County, et al.

Respondent.

MOTION TO DISMISS OF RESPONDENT,
THE COMMON PLEAS COURT of MONTGOMERY COUNTY

ANA LISA RICKS

#67206

Ohio Reformatory for Women
1479 Collins Avenue
Marysville, OH 43040

Relator, Pro se

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

Carley J. Ingram

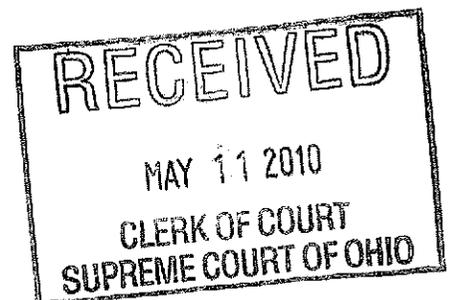
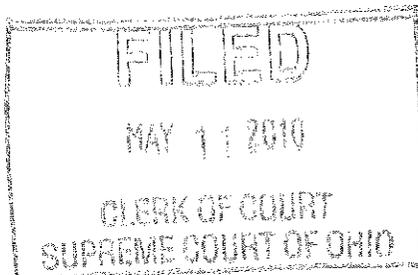
REG. NO. 0020084

Assistant Prosecuting Attorney

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**Attorney For Respondent,
The Common Pleas Court of
Montgomery County**



MOTION TO DISMISS

Under Rule 12(B)(6) of the Ohio Rules of Civil Procedure and S.Ct. Prac.R. 10, Sec. 5, Respondent moves the Court to dismiss Relator's complaint for a writ of mandamus for the following reasons: the complaint fails to state a claim upon which relief in mandamus can be granted; Relator did properly caption the action as R.C. 2731.04 requires; and she has not met the mandatory requirements of R.C. 2969.25(C).

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

By  _____

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**Attorney for Respondent,
The Common Pleas Court of
Montgomery County**

Memorandum

On April 19, 2010, Ana Lisa Ricks, an inmate at the Ohio State Reformatory for Women, filed a complaint in mandamus in which she asked this Court to issue a writ directing the Common Pleas Court of Montgomery County to vacate her conviction for felonious assault in Case No. 1981 CR 733 and thereby clear the way for her immediate release from custody. Ms. Ricks was

sentenced to a prison term of 2 to 15 years upon her conviction of felonious assault in 1982, but was allowed to remain at liberty on her own recognizance during appeal. She insists in her complaint that it was not her fault that no one ever told her that she'd lost her appeal, and she argues that her right to due process is violated by requiring her to serve her sentence twenty-four years after it was imposed.

A. The complaint should be dismissed because Ricks has not stated a claim for which relief in prohibition can be granted. Although Ricks asks the Court to order the trial court to vacate its sentencing entry, her objective is her immediate release from prison. (Memorandum, p. 10) Habeas corpus, not mandamus, is the appropriate action for one seeking release from prison. *State ex rel. Foster v. Belmont Cty. Court of Common Pleas*, 107 Ohio St.3d 195, 2005-Ohio-6184, 837 N.E.2d 777, ¶ 5; *State ex rel. Nelson v. Griffin*, 103 Ohio St.3d 167, 2004-Ohio-4754, 814 N.E.2d 866, ¶ 5. She is not entitled to a writ of mandamus to achieve the result she would get in a successful habeas corpus action. *State ex rel. Dix v. McAllister* (1998), 81 Ohio St.3d 107, 108, 1998-Ohio-646, 689 N.E.2d 561, 563. To hold otherwise “would permit inmates seeking immediate release from prison to employ prohibition or mandamus to circumvent the statutory pleading requirements for instituting a habeas corpus action, i.e., attachment of commitment papers and verification.” *State ex rel. Jackson v. Callahan*, 86 Ohio St.3d 73, 73, 1999-Ohio-84, 711 N.E.2d 686, interior brackets omitted. Thus, she has failed to state a claim for which the relief she requests can be granted.

B. Ricks did not supply the Court with the affidavit required by R.C. 2969.25(C). R.C. 2969.25(C) requires an inmate who seeks to avoid payment of the full filing fee in a suit against a government entity to provide an affidavit of indigence containing a certified statement showing the balance in his or her account for each of the preceding six

months and listing the cash and other things of value owned by the inmate. Ricks included an “Affidavit of Indigence” with her complaint, but it contains neither of the two statements required by O.R.C. § 2969.25(C)(1) and (2), and it is not “certified by the institutional cashier.” The requirements of R.C. § 2969.25 are mandatory, and the failure to comply with them subjects an inmate’s action to dismissal. *State ex rel. Norris v. Giavasis*, 100 Ohio St.3d 371, 2003-Ohio-6609, 800 N.E.2d 365 at ¶ 4; see, also, *State ex rel. Brown v. Summit County Court of Common Pleas* (2003), 99 Ohio St.3d 409, 2003-Ohio-4126, 792 N.E.2d 1123 at ¶ 3.

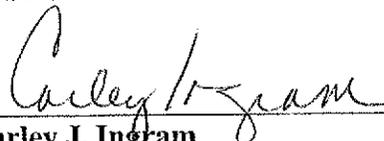
C. Petitioner has mis-captioned this action. Under R.C. 2731.04, an application for a writ of mandamus must be made by a petition that is brought in the name of the state and on relation of the person applying and verified by affidavit. *Martin v. Woods*, 121 Ohio St.3d 609, 2009-Ohio-1928, 906 N.E.2d 1113. Ms. Ricks has not done so.

Conclusion

The complaint against the Common Pleas Court of Montgomery County should be dismissed with prejudice.

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

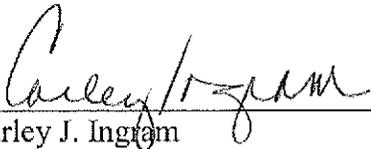
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**Attorney for Respondent,
The Common Pleas Court of
Montgomery County**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss was sent by first class mail on this 10th day of May, 2010, to Opposing Counsel: Ana Lisa Ricks, #67206, Ohio Reformatory for Women, 1479 Collins Avenue, Marysville, OH 43040.

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

By: 

Carley J. Ingram