

ORIGINAL

IN THE SUPREME COURT OF OHIO

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| ANA LISA RICKS, | : | Supreme Court Case No. 10-0685 |
| | : | |
| Relator | : | |
| | : | (Original Action in Mandamus) |
| v. | : | |
| | : | |
| THE COMMON PLEAS COURT OF | : | |
| MONTGOMERY COUNTY, SECOND | : | |
| DISTRICT COURT OF APPEALS, | : | |
| | : | |
| Respondents | : | |

MOTION TO DISMISS ON BEHALF OF RESPONDENT SECOND DISTRICT COURT OF APPEALS

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FILED
 MAY 11 2010
 CLERK OF COURT
 SUPREME COURT OF OHIO

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**MOTION TO DISMISS ON BEHALF OF RESPONDENT SECOND DISTRICT COURT
OF APPEALS**

Now comes the respondent Second District Court of Appeals and moves the Court to dismiss the “Writ of Mandamus” filed by Relator, Ana Lisa Ricks, on April 19, 2010. Reasons in support of this motion to dismiss are set forth in the memorandum below.

Respectfully submitted,



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MEMORANDUM

On April 19, 2010, Relator, Ana Lisa Ricks, filed a “Writ of Mandamus” in the Supreme Court of Ohio. Captioned as Respondents were the Common Pleas Court of Montgomery County and the Second District Court of Appeals.

This matter originates from Ricks’ April 9, 1982 conviction in the Common Pleas Court of Montgomery County Case No. 81-CR-733 for felonious assault and sentence to the Ohio Reformatory for Women. Ricks filed a notice of appeal with Respondent Second District Court of Appeals on April 30, 1982. Shortly before she filed her notice of appeal, Ricks was released by the trial court on an appeal bond – initially in the amount of five thousand dollars cash or surety but later modified (during the pendency of her appeal) to personal recognizance.

On May 3, 1983, Respondent Second District Court of Appeals affirmed the judgment of the trial court. See *State v. Ricks* (May 3, 1983), Montgomery App. No. 7818. It appears from the docket that no warrant was issued by the trial court for Ricks’ arrest, nor was she ordered to begin serving her sentence, immediately following the court of appeals’ decision. On January 22, 2007, the trial court issued a *capias* warrant for Ricks’ arrest, and she was thereafter taken into custody. Ricks was transferred to the Ohio Reformatory for Women on approximately February 12, 2007 to begin serving her sentence.

On April 19, 2010, Ricks filed this petition for an extraordinary writ in the Supreme Court of Ohio. Pursuant thereto, Ricks asks that a writ of mandamus be directed toward Respondent “(THE STATE OF OHIO) MONTGOMERY COUNTY COMMON PLEAS COURT, 2ND DIST. CRIMINAL DIVISION” to vacate her 1982 sentence. According to Ricks, her right to due process of law was violated by the approximately twenty-four-year delay between

the date Respondent Second District Court of Appeals affirmed her conviction and the actual execution of her sentence. For the following reasons, Ricks' petition should be denied.

I.

RICKS' "WRIT OF MANDAMUS" DOES NOT APPEAR TO SEEK RELIEF FROM
RESPONDENT SECOND DISTRICT COURT OF APPEALS.

"Mandamus is a writ, issued in the name of the state to an inferior tribunal * * * or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." R.C. 2731.01; *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 166, 4 O.O.3d 367, 364 N.E.2d 1.

Despite including Respondent Second District Court of Appeals in the caption of her "Writ of Mandamus," the thrust of Ricks' petition is directed at Respondent Common Pleas Court of Montgomery County. For example, within the conclusion to her petition, Ricks provides the following:

"AT THIS TIME THE RELATOR IS FILING AN INSTANT ACTION SEEKING A WRIT OF MANDAMUS MANDATING RESPONDENT, (THE STATE OF OHIO) MONTGOMERY COUNTY COMMON PLEAS COURT, 2ND DIST. CRIMINAL DIVISION TO VACATE HER SENTENCE, * * * "

and

"ANA LISA RICKS HAS A CLEAR RIGHT TO ASK THE SUPREME COURT OF OHIO TO MANDATE THE COMMON PLEAS COURT OF MONTGOMERY COUNTY TO VACATE HER SENTENCE IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO."

Because Ricks does not seek relief from Respondent Second District Court of Appeals, it is doubtful that said Respondent was intended to be named a party to this action. Accordingly, Ricks' "Writ of Mandamus" should be dismissed as to Respondent Second District Court of Appeals.

II.

RICKS' PETITION FAILS TO STATE A CLAIM IN MANDAMUS AGAINST THE SECOND DISTRICT COURT OF APPEALS UPON WHICH RELIEF MAY BE GRANTED.

In the event the Supreme Court of Ohio finds that Respondent Second District Court of Appeals is a party to this action, Respondent asserts that Ricks has failed to demonstrate that the court of appeals has a duty to provide the relief requested.

A writ of mandamus is an *extraordinary remedy*, which is to be exercised with great caution and only when the right of the petitioner is manifestly clear. See *State ex rel. Taylor*, 50 Ohio St.2d at 166. To be entitled to a writ of mandamus, the petitioner must demonstrate: (1) that she has a clear legal right to the relief requested; (2) that the respondent is under a clear legal duty to perform the requested act; and (3) that the petitioner has no plain and adequate remedy in the ordinary course of law. *State ex rel. Luna v. Huffman* (1996), 74 Ohio St.3d 486, 487, 659 N.E.2d 1279.

At the core of Ricks' petition is her belief that she has a clear legal right to her sentence being vacated. Correspondingly then, Respondent Second District Court of Appeals must have a duty to provide that relief.

On May 3, 1983, Respondent rendered its opinion and final judgment in Montgomery App. No. 7818 affirming the judgment of the common pleas court. See *State v. Ricks* (May 3,

1983), Montgomery App. No. 7818. From that day forward, it does not appear that any matters with regard to the underlying criminal case or appeal have been pending before Respondent. Without a sufficient vehicle upon which to act, Respondent has no jurisdiction to take action in Ricks' case. Ricks does not claim otherwise.

At this point, Respondent is not addressing the alleged merits of Ricks' claim. Whether she is, or is not, entitled to have her sentence vacated is a matter that may come before Respondent if the court of appeals' jurisdiction is properly invoked. Ultimately, nothing concerning Ricks is pending before Respondent, and Respondent has no basis to exercise jurisdiction over Ricks' current claim. Thus, in the absence of that jurisdiction, it cannot be said that Respondent has a clear legal duty to vacate Ricks' sentence or that Ricks has a clear legal right to have such relief afforded by Respondent.

Thus, Ricks' request for a writ of mandamus fails to demonstrate that Respondent Second District Court of Appeals is under a clear legal duty to vacate her sentence in case no. 81-CR-733. Consequently, Ricks' petition should be denied.

III.

RICKS HAS FAILED TO PROPERLY CAPTION HER PETITION FOR A WRIT OF MANDAMUS.

R.C. 2731.04 provides that an action for a writ of mandamus "must be * * * in the name of the state on the relation of the person applying." Failure to bring an action in mandamus in the name of the state on the relation of the person requesting the writ may warrant dismissal. See *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382, at ¶34; *Gannon v. Gallagher* (1945), 145 Ohio St. 170, 171, 30 O.O. 351, 60 N.E.2d 666; *Maloney v.*

Court of Common Pleas of Allen Cty. (1962), 173 Ohio St. 226, 227, 19 O.O.2d 45, 181 N.E.2d 270. The petition in this action simply designates “Ana Lisa Ricks” as Relator. The failure of Ricks to properly caption her petition for a writ of mandamus is grounds for dismissal.

IV.

For the foregoing reasons, Respondent Second District Court of Appeals respectfully moves the Court to dismiss the “Writ of Mandamus” filed by Relator, Ana Lisa Ricks, and to assess the costs of this action against Ricks.

Respectfully submitted,



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PROOF OF SERVICE

I hereby certify that the foregoing "Motion to Dismiss on Behalf of Respondent Second District Court of Appeals," along with its accompanying memorandum, was served by regular United States mail on the 10th day of May, 2010 upon Relator, Ana Lisa Ricks, #067-206, Ohio Reformatory for Women, 1479 Collins Avenue, Marysville, Ohio 43040, and upon Carley J. Ingram, Counsel for Respondent Common Pleas Court of Montgomery County, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422.



Ronald E. Mount

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