

ORIGINAL

IN THE SUPREME COURT OF OHIO

MARK-TIMOTHY SCHAFER,	:	SUP. CASE No.:	10 - 0732
	:		
RELATOR,	:		
	:		
VS.	:	APP. CASE No.'s:	04 - 06 - 39
	:		04 - 08 - 007
	:		
AMY GALBRAITH, CLERK OF COURTS,	:		
OF THE THIRD DISTRICT COURT OF	:		
APPEALS FOR DEFIANCE COUNTY,	:		
	:		
RESPONDENT.	:	TRIAL CASE No.:	04 CR 08865

**RESPONDENT'S REPLY TO RELATOR'S
COMPLAINT FOR A WRIT OF MANDAMUS
AND RESPONDENT'S MOTION TO DISMISS**

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Prosecuting Attorney

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ATTORNEYS FOR RESPONDENT

FILED
MAY 19 2010
CLERK OF COURT
SUPREME COURT OF OHIO

RELATOR

RECEIVED
MAY 19 2010
CLERK OF COURT
SUPREME COURT OF OHIO

RESPONSE TO DEFENDANT'S COMPLAINT FOR A WRIT OF MANDAMUS
AND RESPONDENT'S MOTION TO DISMISS

COMES NOW the Respondent, by and through the undersigned counsel, and hereby moves this Court to overrule/deny and/or dismiss the Relator's Complaint for a Writ of Mandamus.

FOR CAUSE, the Defiance County Clerk of Courts for the Third Appellate Judicial District for Defiance County, (this position is currently held by the duly elected Amy M. Galbraith, but was held by the duly elected Jean Ziegler at the time of June 25, 2007, when the Journal Entry in question of the Third Appellate Judicial District for Defiance County was filed) has already fully complied with the directives of the Third District as evidenced by the trial court's subsequent actions, which are journalized by Judgment Entries dated on or around September 4, 2007, December 12, 2007, and February 6, 2008. Therefore, these trial court actions evidence that the Clerk of Courts already previously certified a copy of the June 25, 2007, Journal Entry of the Third District. Wherefore, the Clerk already performed all required acts requested by the Relator, and his Complaint for Mandamus should be denied/overruled and/or dismissed.

A Memorandum of Law and Facts in support is attached herein.

WHEREFORE, the State of Ohio, respectfully requests that this Court deny/overrule and/or dismiss the Relator's Complaint for a Writ of Mandamus.

RESPECTFULLY SUBMITTED,



RUSSELL R. HERMAN (#0068709)
Defiance County, Ohio
Assistant Prosecuting Attorney
rrhpros@defiance-county.com
ATTORNEY FOR APPELLEE

MEMORANDUM

The Relator/Defendant, in his Complaint for a Writ of Mandamus, requests that this Court order the trial court to compel the Third Appellate Judicial District for Defiance County Clerk of Courts to certify and serve an order, which was file-stamped on June 25, 2007, to the warden of his penal institution and to cause his discharge from incarceration at the North Central Correctional Institution in Marion, Ohio.

However, the record of the trial court and the appellate district court reflect that the Defendant was properly remanded to the trial court for further proceedings on the underlying community control/probation violation.

To wit: the June 25, 2007, Judgment Entry from the Third Appellate Judicial District for Defiance County required that the: “*we reverse the judgment of the trial court*” and that “*the cause be, and hereby is, remanded to the trial court for the execution of the judgment ...*”. This Judgment Entry effectively reversed the trial courts revocation of the Defendant’s community control sanctions/probation as the appellate court found that the Defendant had previously withdrawn his plea/admission to numerous violations of his community control sanctions/probation.

Thereafter, on September 17, 2007, the trial court held a new probable cause hearing on the remanded violation of community control sanctions/probation. The trial court found probable cause to support the State’s Motion to Revoke Community Control. The Defendant was subsequently found competent by the trial court after a hearing on the issue raised by the Defendant.

On January 6, 2008, the trial court ruled on another probable cause hearing for yet another Motion to Revoke Probation filed by the State, finding probable cause to support the Motion. A final adjudicatory hearing was scheduled. On February 12, 2009, the trial court found clear and convincing evidence of the Defendant’s violation of community control sanctions/probation, and

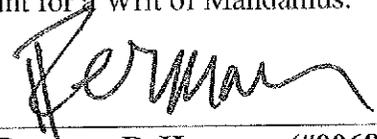
sentenced the Defendant to the balance of his ten (10) year term of incarceration.

The Defendant appealed this decision, and the Third Appellate Judicial District for Defiance County ruled on December 1, 2008, affirming the reimposition of the balance of his ten (10) year term of incarceration for the Defendant, and specifically holding that the trial court properly acted upon their former remand from June 25, 2007.

This decision was revisited by the Third Appellate Judicial District for Defiance County on April 7, 2009, on the Defendant's motion for reconsideration, which was denied.

Simply put, there is no order from the Third Appellate Judicial District for Defiance County that would require the Defendant to be discharged from his current prison sentence in this underlying case. Therefore, the Clerk of Court for the Third Appellate Judicial District for Defiance County cannot perform an action that she had not been previously ordered to execute by the appellate court. Consequently, the Defendant's Complaint seeking a Mandamus Order should be dismissed as not having any merit.

WHEREFORE, based upon the foregoing, the State respectfully requests that this honorable Court overrule/deny and/or dismiss the Defendant's Complaint for a Writ of Mandamus.



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ATTORNEY FOR APPELLEE

CERTIFICATE OF SERVICE

I, **RUSSELL R. HERMAN**, Assistant Prosecuting Attorney, Defiance County, Ohio, do hereby certify that a copy of the foregoing RESPONSE TO RELATOR'S COMPLAINT was served upon **MARK TIMOTHY SCHAFER**, Inmate #529-896, North Central Correctional Institution, P.O. Box 1812, Marion, Ohio 43302, by ordinary U.S. mail this *17th* day of May, 2010.



RUSSELL R. HERMAN (#0068709)
Defiance County, Ohio
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ATTORNEY FOR APPELLEE