

ORIGINAL

THE SUPREME COURT OF OHIO

STATE EX REL,

FRED BILLITER, INMATE # 383177

CASE NO. 10-2243

VS.

NOBLE CORRECTIONAL INSTITUTION,

AND

NOBLE COUNTY CLERK OF COURTS

WRIT OF MANDAMUS

AND

TUSCARAWAS CO. CLERK OF COURTS

RESPONDENTS

RECEIVED  
JAN 12 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

RESPONDENT, NOBLE COUNTY  
CLERK OF COURTS, NOBLE  
CORRECTIONAL INSTITUTION

Represented by:

Clifford N. Sickler, S.Ct. # 0018853  
Prosecutor  
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FILED  
JAN 12 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

RELATOR, FRED BILLITER,  
INMATE # 383177

Fred Billiter, inmate # 383177  
Noble Correctional Institution,  
15708 McConnellsville Rd.,  
Caldwell, Ohio 43724

THE SUPREME COURT OF OHIO

STATE EX REL,

FRED BILLITER, INMATE # 383177

CASE NO. 10-2243

VS.

NOBLE CORRECTIONAL INSTITUTION,

AND

NOBLE COUNTY CLERK OF COURTS

DEFENDANT'S MOTION TO

AND

DISMISS PETITION FOR WRIT

TUSCARAWAS CO. CLERK OF COURTS

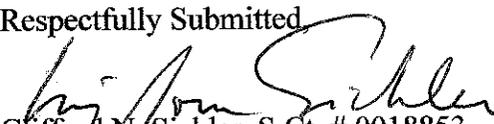
OF MANDAMUS

RESPONDENTS

Now comes the Respondent, Noble County Clerk of Courts, through the Prosecutor, Clifford N. Sickler, on behalf of Noble County, Ohio, who moves this Court to dismiss the mandamus action for failing to comply with Ohio Revised Code § 2969.25, (A) and (C) and Ohio Revised Code §2969. 26.

Respondent has attached a memorandum hereto detailing its reasoning for the motion to dismiss.

Respectfully Submitted

  
Clifford N. Sickler S.Ct. # 0018853

Prosecutor

508 North St.

Caldwell, Ohio 43724

(740) 732-5685

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## MEMORANDUM IN SUPPORT

### **1. Relator Did Not File an Affidavit Detailing Prior Civil Actions**

Pursuant O.R.C. § 2969.25(A): At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court. The affidavit shall include all of the following for each of those civil actions or appeals:

- (1) A brief description of the nature of the civil action or appeal;
- (2) The case name, case number, and the court in which the civil action or appeal was brought;
- (3) The name of each party to the civil action or appeal;
- (4) The outcome of the civil action or appeal \* \* \* .

Relator provided none of the information required by O.R.C. § 2969.25(A) enumerated above such as a description of the nature of the civil action, the case name or number, the name of each party, or the outcome of the civil action.

### **2. Relator Did Not File a Statement of his Inmate Account with his Affidavit of Indigency**

Pursuant O.R.C. § 2969.25(C):

[A]n inmate who files a civil action or appeal against a government entity or employee seeks a waiver of the prepayment of the full filing fees assessed by the court in which the action or appeal is filed, the inmate shall file with the complaint or notice of

appeal an affidavit that the inmate is seeking a waiver of the prepayment of the court's full filing fees and an affidavit of indigency. The affidavit of waiver and the affidavit of indigency shall contain all of the following:

- (1) A statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier;
- (2) A statement that sets forth all other cash and things of value owned by the inmate at that time.

It is not enough to simply file an affidavit of indigency. *State ex rel. Manns v. Henson* 119 Ohio St. 3d 348, 349, 2008-Ohio-4478, at ¶4. O.R.C. § 2969.25 demands strict compliance. Relator has not produced any documentation with respect to paragraphs (1) or (2) of ¶ (C) of §2969.25.

3. **Plaintiff Failed to Comply with O.R.C. §2969.26**

O.R.C. §2969.26 requires the inmate to file an affidavit with respect to the grievance filed with the institution including the date and decision regarding the grievance. The Relator has failed to document this grievance procedure and thus Relator has failed to comply with the statute and may not have exhausted his remedies before filing this action.

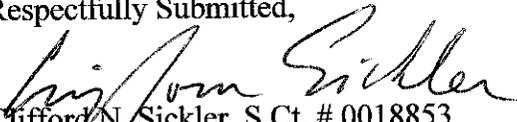
### CONCLUSION

For the foregoing reasons, Relator's action must fail and Respondent requests that this Court dismiss Relator's Writ of Mandamus with prejudice. Pursuant to O.R.C. Chapter 2731 in "order to be entitled to a writ of mandamus, a relator must show: (1) that

he has a clear legal right to the relief prayed for; (2) that the respondents are under a clear legal duty to perform the acts; and (3) that the relator has no plain and adequate remedy in the ordinary course of the law. All three of these requirements must be met in order for mandamus to lie, and at the very least, an appeal is an adequate remedy at law which is sufficient to prevent relief in mandamus. *State Ex Rel. McGrath*, 2003 Ohio App. Lexis 1865 (April 17, 2003).

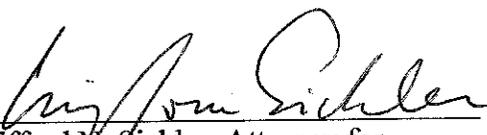
Relator has not complied with the requisite statutes and has failed to show any of the three prongs enumerated above in *State Ex Rel. McGrath*.

Respectfully Submitted,

  
Clifford N. Sickler S.Ct. # 0018853  
Prosecutor  
508 North St.  
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#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion to dismiss was mailed by U.S. Regular mail to Relator, Fred Billiter, inmate # 383177 at Noble Correctional Institution, 15708 McConnelsville Rd., Caldwell, Ohio 43724 this 11<sup>th</sup> day of January, 2011.

  
Clifford N. Sickler, Attorney for  
Respondents