

ORIGINAL

IN THE SUPREME COURT OF OHIO

Hector Johnson,

Relator,

v.

Bureau of Sentencing Computations
Chief Melissa Adams

Respondent.

Case No. 2012-1430

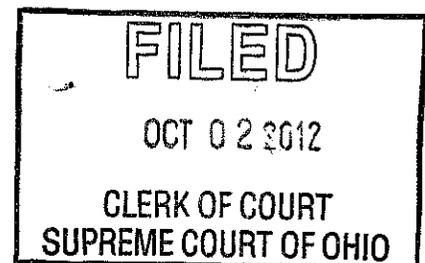
Original Action in Mandamus

RESPONDENT'S MOTION TO DISMISS

Michael DeWine (0009181)
Ohio Attorney General

David A. Lockshaw, Jr. (0082403)
Counsel of Record for Respondent
Assistant Attorney General
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215
Phone: (614) 644-7233
Fax: (877) 651-4820
david.lockshaw@ohioattorneygeneral.gov

Hector Johnson
Pro se Relator
Belmont Correctional Institution
P.O. Box 540
St. Clairsville, Ohio 43950



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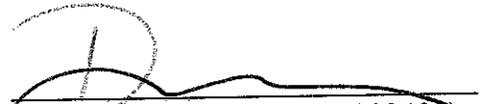
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RESPONDENT'S MOTION TO DISMISS

Pursuant to S.Ct.Prac.R. 10.5(A) and Civ.R. 12(B)(6), Respondent, Bureau of Sentence Computation Chief Melissa Adams, moves this Court to dismiss Relator's Complaint for a Writ of Mandamus because the caption on the Complaint is deficient, the attached affidavits do not comply with S.Ct.Prac.R. 10.4(B), Relator has an alternative remedy in the ordinary course of the law, and this action will become moot on October 3, 2012. A Memorandum in Support is attached.

Respectfully submitted,
Michael DeWine (0009181)
Ohio Attorney General


David A. Lockshaw, Jr. (0082403)
Counsel of Record for Respondent
Assistant Attorney General
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215
Phone: (614) 644-7233
Fax: (877) 651-4820
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On August 22, 2012, Relator, Hector Johnson, an inmate at Belmont Correction Institution, filed this action for a writ of mandamus requesting that the Court compel Respondent, Bureau of Sentence Computation Chief Melissa Adams, to credit him with enough jail-time credit to push his release date up from October 3, 2012 to September 21, 2012. Am. Compl. at 6. Respondent does not dispute that Relator will be released from prison on October 3, 2012, thus rendering this action moot on that date.

Furthermore, Relator's Complaint should be dismissed because it was not brought in the name of the state on the relation of the person applying as required by R.C. 2731.04. Also, the affidavits attached to the Complaint do not comply with S.Ct.Prac.R. 10.4(B). Finally, since Relator contends that he should have been released from prison on September 21, 2012, habeas corpus became the appropriate remedy at law to challenge his imprisonment following that date.

II. LAW AND ARGUMENT

A. Legal Standards

1. Civ.R. 12(B)(6)

A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint. *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to relief. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975). For purposes of the motion, a court must presume that all factual allegations of the complaint are true and make all

reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988).

2. Entitlement to a Writ of Mandamus

For a court to grant a writ of mandamus, the relator must prove (1) a clear legal right to the requested act, (2) a corresponding clear legal duty on the part of the respondent to perform that act, and (3) the absence of a plain and adequate remedy in the ordinary course of the law. *State ex rel. Sekermestrovich v. City of Akron*, 90 Ohio St.3d 536, 537, 740 N.E.2d 252 (2001), citing *State ex rel. Dehler v. Sutula*, 74 Ohio St.3d 33, 34, 656 N.E.2d 332 (1995), and *State ex rel. BSW Dev. Group v. City of Dayton*, 83 Ohio St.3d 338, 344, 699 N.E.2d 1271 (1998). A failure to show any one of these requisite factors requires a court to deny the petition. *State ex rel. Karmasu v. Tate*, 83 Ohio App.3d 199, 202, 614 N.E.2d 827 (4th Dist. 1992).

B. Relator's Complaint fails to state a claim upon which relief can be granted.

1. Relator did not bring this action in the name of the state on the relation of the person applying as required by R.C. 2731.04.

R.C. 2731.04 states in pertinent part, "Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit." It cannot be disputed that Relator did not bring this case in the name of the state on his relation. This provides the Court with grounds to dismiss the Complaint. *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382, ¶ 34 ("The court has dismissed petitions for writs of mandamus when, inter alia, the action was not brought in the name of the state on the relation of the person requesting the writ.").

2. The affidavits attached to Relator's Complaint do not comply with S.Ct.Prac.R. 10.4(B).

S.Ct.Prac.R. 10.4(B) provides:

All complaints shall contain a specific statement of facts upon which the claim for relief is based, shall be supported by an affidavit specifying the details of the claim, and may be accompanied by a memorandum in support of the writ. The affidavit required by this division shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit. All relief sought, including the issuance of an alternative writ, shall be set forth in the complaint.

(Emphasis added). None of the affidavits accompanying Relator's Complaint show affirmatively that he is competent to testify to all of the matters stated in the affidavits. This provides the Court with additional grounds for dismissal of the Complaint.

3. Habeas corpus offers Relator a plain and adequate remedy in the ordinary course of the law.

Relator's objective when he filed his Complaint was to be credited with enough jail-time credit to be released from prison on September 21, 2012 instead of October 3, 2012. Am. Compl. at 6. Following September 21, 2012, it stands to reason that Relator's objective is now immediate release from prison. Thus, his mandamus claim lacks merit. *State ex rel. Gordon v. Murphy*, 112 Ohio St.3d 329, 2006-Ohio-6572, 859 N.E.2d 928, ¶ 5. Habeas corpus, rather than mandamus, is the proper action to seek release from prison. *Id.*; *State ex rel. Rudolph v. Horton*, 119 Ohio St.3d 350, 2008-Ohio-4476, 894 N.E.2d 49, ¶ 3. Thus, Relator has a plain and adequate remedy in the ordinary course of the law which precludes him from eligibility for a writ of mandamus. Therefore, his Complaint should be dismissed.

4. This action becomes moot on October 3, 2012.

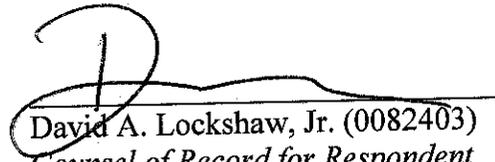
Relator correctly states in his Complaint that he will be released from prison on October 3, 2012. Am. Compl. at 6. Once he is released, this mandamus action attempting to compel Respondent to facilitate an earlier release will be rendered moot. *See State ex rel. Fontanella v. Kontos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220, ¶ 6 ("Neither procedendo nor mandamus will compel the performance of a duty that has already been performed."); *see also*

Larsen v. State, 92 Ohio St.3d 69, 69, 748 N.E.2d 72 (2001) (“If a habeas corpus petitioner seeking release is subsequently released, the petitioner’s habeas corpus claim is normally rendered moot.”).

III. CONCLUSION

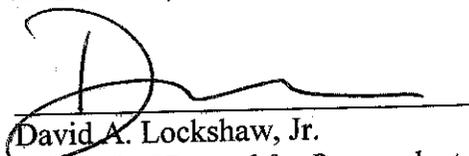
Wherefore, for the foregoing reasons, Respondent respectfully requests that the Court issue an Order dismissing Relator’s Complaint with prejudice, assessing costs to Relator, and ordering any other relief deemed necessary and just.

Respectfully submitted,
Michael DeWine (0009181)
Ohio Attorney General


David A. Lockshaw, Jr. (0082403)
Counsel of Record for Respondent
Assistant Attorney General
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215
Phone: (614) 644-7233
Fax: (877) 651-4820
david.lockshaw@ohioattorneygeneral.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2012 a true and accurate copy of the foregoing Respondent’s Motion to Dismiss was sent by regular U.S. mail, postage prepaid, to Hector Johnson, *pro se*, Belmont Correctional Institution, P.O. Box 540, St. Clairsville, Ohio 43950.


David A. Lockshaw, Jr.
Counsel of Record for Respondent
Assistant Attorney General