

IN THE SUPREME COURT OF OHIO

13-0325

STATE OF OHIO EX REL.,
RICHARD MCGEE(522481)
P.O. BOX 08107
MANSFIELD, OHIO 44901

CA

Relator,

v.

COMPLAINT FOR WRIT OF
MANDAMUS

[AN ORIGINAL ACTION]

JUDGES OF THE EIGHTH DISTRICT
COURT OF APPEALS
1 LAKESIDE AVENUE
CLEVELAND, OHIO 44113

Respondents.

I. JURISDICTION

This complaint arises from Respondents' failure to allow Relator to proceed with his recent appeal. The basis for Respondents' dismissal of Relator's appeal was egregiously rendered, and contrary to the Ohio Rules of Court.

As such, Relator has absolutely no other adequate remedy at law.

II. BASIS FOR COMPLAINT

1. On 10/11, 2012, the Eighth District Court of Appeals for Cuyahoga County(Respondents), dismissed

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FEB 22 2013
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
FEB 22 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Relator's appeal in Case No 98981 .

2. Respondents' basis for dismissing Relator's appeal was wholly due to Relator failing to file a Praeceptum with his original notice of appeal. (See docket entry of Eighth District Court of Appeals relating to Case No CA 98981).
3. However, Relator was not provisionally required to file a praecipe with the court reporter since no transcript was needed, and the rules specifically regard such attachment as discretionary by appellants.
4. As such, Respondents' actions in the cause above, were undoubtedly, malicious, and entirely arbitrary in nature.
5. Relator's appeal should have never been dismissed due to his decision not to file a praecipe with the court reporter in the above cause. The decision whether or not to file a discretionary praecipe rests solely with Relator, not Respondents. As a result, Relator's appeal was wrongfully dismissed and must be immediately reinstated.
6. So hereby, Relator brings forth the instant action in mandamus, to respectfully request of this Court, an Order, compelling Respondents to expressly reinstate

his appeal above. To date, Relator has been severely harmed by Respondents actions, and continues to be without any recourse of law.

7. Hereby, the instant action in Mandamus is properly brought before this High Court.

III. CONCLUSION

Upon full review of the averments above, Relator expressly and respectfully moves this Honorable Court for relief in Mandamus.

[R]elief is accordingly sought.

Respectfully submitted,

Richard McGee 552-481
RICHARD MCGEE

Relator.

AFFIDAVIT OF VERITY OF RICHARD MCGEE

STATE OF OHIO)
)SS:
COUNTY OF RICHLAND)

I, Richard Mcgee, after first being duly informed of the penalty of perjury, hereby swear that the following is true:

- 1) That I am the named affiant herein.
- 2) That all of the facts contained in this complaint are true and wholly substantiated by records in the custody of the Cuyahoga County Clerk's Office.
- 3) That upon full inspection of the docket entry for the Eighth District Court of Appeals, it will be firmly established that I was wrongfully terminated on appeal.
- 4) As such, this Court will come to but one conclusion: that my recent appeal must be reinstated.
- 5) Further affiant sayeth naught.

Richard McGehee 552481
AFFIANT

Sworn to, and subscribed, in my presence, this 4th day of February, 2013

Diane L. Soltész
NOTARY



AFFIDAVIT CERTIFYING PRIOR CIVIL ACTIONS AND
CRIMINAL APPEALS, O.R.C. 2969.25

STATE OF OHIO)
COUNTY OF RICHLAND) SS:

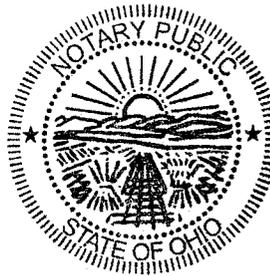
I, Richard Mcgee, after first being duly informed of the penalty of perjury, hereby swear that the following is true:

- 1) That I am the named affiant herein.
- 2) That On May 13, 2010, my direct appeal was affirmed in part, and remanded for resentencing in Case No. CA 92019. (2010 Ohio 2081)
- 3) That on December 15, 2011, a subsequent appeal was affirmed in Case No. CA 96688. (2011 Ohio 6433)
- 4) That on April 25, 2012, my application for reopening (App.R. 26(B)) was denied in Case No. CA 96688. (2012 Ohio 1829)
- 5) And on October 1, 2012, my appeal was dismissed in Case No. CA 98981.
- 6) Other than the above appeals, I hereby certify that no other prior appeals nor civil actions have been taken.

Robert McJee 552 481
AFFIANT

Sworn to, and subscribed, in my presence this 14th day of February, 2013.

Diane L. Soltetz
NOTARY



DIANE L. SOLTETZ
NOTARY PUBLIC,
STATE OF OHIO
My Commission
Expires
April 3, 2017

WAIVER AND AFFIDAVIT OF INDIGENCY, O.R.C. 2969.25(C)

STATE OF OHIO
COUNTY OF RICHLAND } SS:

I, Richard McGee, after first being duly informed of the penalty of perjury, hereby swear that the following is true:

- 1) That I am the named affiant herein.
- 2) That presently, I am incarcerated at Richalnd Correctional Institution where I earn a monthly income of only \$20.00.
- 3) As a result, I am indigent, and cannot pay any of the costs associated with this action.
- 4) I hereby, request waiver, of any and all costs and fees associated with the instant action before this Court.
- 5) Further affiant sayeth naught.

Richard McGee 552-481
AFFIANT

Sworn to, and subscribed, in my presence this 4th day of February, 2013.

Diane L. Soltész
NOTARY

