

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL. KRISTOFFER MORRIS,

Relator,

Case No. 2013-0565

vs.

JUDGE DAVID CAIN, et al.,

Respondents.

FILED
MAY 20 2013
CLERK OF COURT
SUPREME COURT OF OHIO

ORIGINAL ACTION IN
MANDAMUS/PROHIBITION

RELATOR'S MOTION FOR LEAVE OF COURT TO AMEND THE COMPLAINT

Now comes the Relator, Kristoffer Morris, pro se, who hereby moves this Honorable Court for leave to amend his complaint, should the Court determine that the need to amend has not been rendered moot by Relator's memorandum in opposition to Respondent Judge Cains motion to dismiss. It is clear that S. Ct. Prac. R. 10.5 allows for an "amended complaint" to be filed "under S. Ct. Prac. R. 8.7 and Civ. R. 15(A)." However, since the Respondents have both filed a responsive pleading, the Relator is of the understanding and belief that the rules cited above require that he must now seek leave of court to amend his complaint.

Respondent Judge Cain asserts, as grounds for dismissal, that the Relator's Affidavit Pursuant To O.R.C. § 2969.25(A) "is inaccurate." (Page 1, par. 5). However, a full reading of the Affidavit, the Respondent's motion to dismiss, and the Relator's memorandum in opposition, clearly shows that said inaccuracies were merely an oversight of a completely harmless nature. To be sure, the Relator may well have misconstrued the legislative intent of R.C. 2969.25(A). Of course, it may be the Respondent who misconstrues legislative intent.

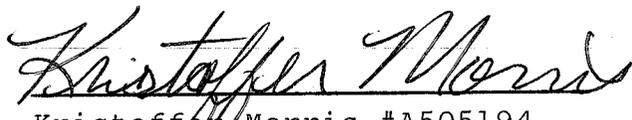
Nevertheless, from a strictly technical standpoint, the Respon-

dent is correct in the Relator's oversight in failing to include civil actions that may very well be of the type described in R.C. 2969.25(A). As such, in the Relator's memorandum in opposition, he concedes that the Respondent has correctly identified civil actions inadvertently omitted by the Relator. Because this is so, and because of the harmless nature of the oversight (and the Relator's status as a pro se litigant), the Relator submits that the issue should now be rendered moot.

However, because the Relator is unclear as to the proper remedy, and unable to find direction or instruction of same, he alternatively submits this motion for leave of court to amend the complaint, should the Court determine this to be the proper course. In fact, the Relator respectfully includes an Amended Affidavit with this motion, if the Court deems it to be the proper alternative course.

Wherefore, the Relator offers several alternatives for proper correction of the harmless error to which he has conceded, and is prepared to immediately take other corrective action, should the Court determine such action to be proper under the circumstances.

Respectfully submitted,



Kristoffer Morris #A505194
Allen Correctional Institution
Attention C-Unit
2338 North West St.
Lima, Ohio 45801
RESPONDENT, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing (as well as the attached Amended Affidavit Pursuant to R.C. 2969.25(A)), was sent by first-class United States mail to counsel for the Respondent, Scott O. Sheets (0076837), Assistant Prosecuting Attorney, at the office of the Franklin County Prosecutor, 373 South High St., 13th Floor, Columbus, Ohio 43215, on the 11th day of May, 2013.



Kristoffer Morris #A505194
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RELATOR, PRO SE

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Relator,

vs.

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Case No. 2013-0565

AMENDED AFFIDAVIT
PURSUANT TO
R.C. § 2969.25(A)

I, Kristoffer T. Morris, being competent to make this declaration, and Affiant herein, after first being duly sworn and cautioned on my oath under penalty of perjury, do hereby attest to the following as required under Ohio Revised Code Section 2969.25(A):

(1) I have not commenced any civil action or appeal against a government agency or employee seeking punitive or otherwise monetary type damages in the previous five years in any state or federal court.

(2) I clarify that the only exception to item (1) above are various actions that I have undertaken that are all directly related to my criminal case, which also is the subject of the instant action. Since various Ohio courts have construed such actions to technically be of a civil nature, I list them below, although it is my understanding and belief that they do not comport to the legislative intent of R.C. 2969.25(A). This is so because none of said actions were lawsuits seeking punitive damages or any form of monetary gain whatsoever. Further, none of said actions were deemed frivolous or malicious by the courts who had jurisdiction over their resolution.

(a) In 2008, I filed a petition for a writ of habeas corpus with the U.S. District Court for the Southern District of Ohio. (Morris v. Warden, case no. 2:08-CV-1176).

(b) In 2009, I filed an action against my defense attorneys because I was being denied the record in my criminal case, which I needed to pursue relief pro se. (Morris v. Williams, et al., case no. 09-CV-2139).

(c) In 2010, I filed a petition for a writ of mandamus and of procedo against the Tenth District Court of Appeals in order to compel

them to proceed to judgment in my motion to reopen my appeal under App. R. 26(B). Said motion to reopen had been before the Tenth District for about a year with no comment. (State of Ohio ex rel. Kristoffer Morris v. Tenth District Court of Appeals, case no. 2010-0269).

(d) In 2010, I sought to amend my original petition for a writ of habeas corpus to include three new claims that were raised in the motion to reopen my appeal under App. R. 26(B). (Morris v. Warden, case no. 2:10-CV- 542). I sought appeal of the habeas petition with the U.S. District Court of Appeals for the Sixth Circuit (case no. 11-3242), and I sought certiorari review by the United States Supreme Court (case no. 11-7996).

(e) In 2012, I applied for a second or successive petition for a writ of habeas corpus with the U.S. Court of Appeals for the Sixth Circuit (case no. 12-3844).

(f) In 2013, I filed a motion for resentencing and a final appealable order with the Franklin County Court of Common Pleas (case no. 04CR-4866). The issues raised therein constitute the subject of the instant petition for writs of prohibition and mandamus.

Further, Affiant sayeth naught.

Kristoffer Morris

Kristoffer Morris #A505194
Allen Correctional Institution
Attention C-Unit
2338 North West St.
Lima, Ohio 45801
RELATOR, PRO SE

NOTARY PUBLIC

Sworn to and subscribed in my presence, a Notary Public for the State of Ohio, this 11TH day of MAY, 2013.



Edward A. Fisher
Signature of Notary Public

Signature of Notary Public