

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL. RODNEY ZEUNE,

Relator,

CASE NO. 2013-0959

v.

Original Action in Procedendo

JUDGE ALAN TRAVIS,

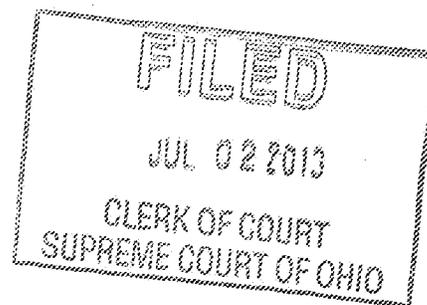
Respondent.

MOTION TO DISMISS OF RESPONDENT JUDGE ALAN
TRAVIS

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IN THE SUPREME COURT OF OHIO

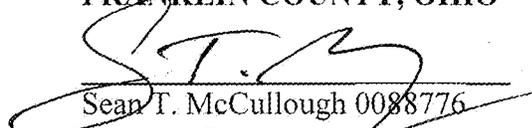
STATE EX REL. RODNEY ZEUNE, :
Relator, :
v. : CASE NO. 2013-0959
JUDGE ALAN TRAVIS, : **Original Action in Procedendo**
Respondent. :

MOTION TO DISMISS OF RESPONDENT JUDGE ALAN TRAVIS

Respondent, the Honorable Judge Alan C. Travis, respectfully moves this Court to dismiss the above captioned action pursuant to Civ. R. 12(b)(6) and S.Ct.Prac.R. 12.04(A)(1). This motion is based on the grounds that Relator has not stated a claim on which relief can be granted; specifically, that Relator has failed to comply with the requirements set forth in R.C. § 2969.25. The reasons for this motion are set forth in the Memorandum in Support, which is attached and incorporated by reference.

Respectfully submitted,

**RON O'BRIEN
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MEMORANDUM IN SUPPORT

I. Facts

Relator filed the instant petition in *Procedendo* on June 12, 2013, purportedly to request this Court order Respondent, a visiting judge in the Franklin County Court of Common Pleas, to proceed to judgment and hold a sentencing hearing in an underlying trial court case captioned *State v. Zeune*, Franklin C.P. Case No. 09CR-4919 (Oct. 22, 2010).

II. Standard of Review

In considering a motion to dismiss for failure to state a claim, the Court must construe all material allegations in the Complaint and all inferences that may be reasonably drawn therefrom in favor of the nonmoving party. *Fahnbulleh v. Strahan*, 73 Ohio St.3d 666, 667, 653 N.E.2d 1186 (1995). 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 plaintiff can prove no set of facts warranting relief. *State ex rel. Jennings v. Nurre*, 72 Ohio St.3d 596, 597, 651 N.E.2d 1006 (1995); *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 144, 573 N.E.2d 1063 (1991).

III. Law and Argument-- Relator has failed to comply with the requirements of R.C. § 2969.25

Relator has failed to comply with R.C. 2969.25(A) which provides, in pertinent part, that “[a]t 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.” R.C. § 2969.25 (A). Compliance with R.C. 2969.25(A) is mandatory and failure to comply with its requirements is grounds for dismissal in Ohio. *Hazel v. Knab*, 130 Ohio St. 3d 22, 2011-Ohio-4608, 955 N.E.2d 378,

¶ 1 (citing *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5); *State ex rel. Alford v. Winters*, 80 Ohio St. 3d 285, 286, 685 N.E.2d 1242 (1997).

A review of the instant petition reveals that Relator has filed an affidavit listing certain civil actions, but has not included all actions required under R.C. 2969.25. The code requires any “civil action or *appeal* of a civil action that the inmate has filed in the previous five years” to be listed in this affidavit. R.C. § 2969.25(A). Though Relator has listed a number of civil actions he has filed in various Ohio courts, he has not listed his appeal of a foreclosure action. Relator appealed this foreclosure action from the Franklin County Court of Common Pleas to the Tenth District Court of Appeals for the State of Ohio on November 19, 2008. *Huntington Natl. Bank v. Zeune*, 10th Dist. No 08AP-1020, 2009-Ohio-3482. This action was appealed less than five years prior to the filing of the instant petition, and Relator has failed to identify this case at the filing of this petition pursuant to R.C. § 2969.25 (A). Relator is familiar with the requirements of R.C. § 2969.25 as illustrated by a simple review of the civil actions listed on his affidavit, but has still failed to identify all actions required under R.C. § 2969.25(A). Therefore, this action must be dismissed.

Relator has also failed to comply with R.C. § 2969.25(C) which requires that, at the time a petition is filed, the inmate file with their affidavit of indigency both “(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[, and] (2) A statement that sets forth all other cash and things of value owned by the inmate at that time.” R.C. § 2969.25(C) (emphasis added). Again, compliance with R.C. § 2969.25 is mandatory and

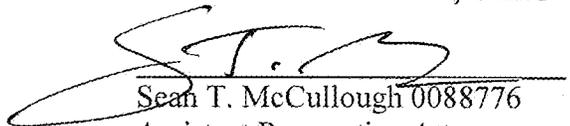
failure to comply with its requirements is grounds for dismissal. *Hazel*, at ¶ 1; *Bechtel*, at ¶ 5; *Winters*, at 286. A review of the petition reveals that Relator did include an affidavit of indigency, but has not provided either (1) a statement of his account as certified by the institutional cashier, or (2) a statement of all things of value. Failure to include conforming statements is mandatory grounds for dismissal of this action. Accordingly, this matter must be dismissed.

IV. Conclusion

As Relator has not complied with R.C. § 2969.25, Respondent respectfully requests that this Court grant his motion and that Relator's petition for a writ of procedendo be dismissed.

Respectfully submitted,

RON O'BRIEN
PROSECUTING ATTORNEY
FRANKLIN COUNTY, OHIO

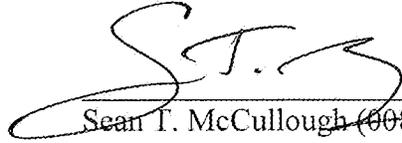


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CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing was mailed via ordinary mail this 2nd day of July, 2013, to the following:

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