

ORIGINAL

IN THE SUPREME COURT OF OHIO

RAYMOND MOSS,

RELATOR,

Case No. 2013-1003

-vs-

HONORABLE SHIRLEY STRICKLAND SAFFOLD,

RESPONDENT.

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RESPONDENT'S MOTION TO DISMISS  
COMPLAINT FOR WRIT OF MANDMAUS

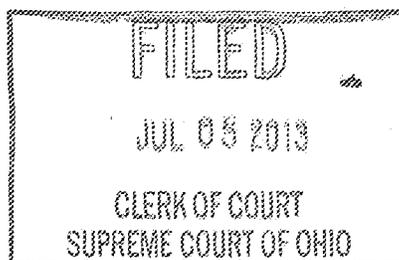
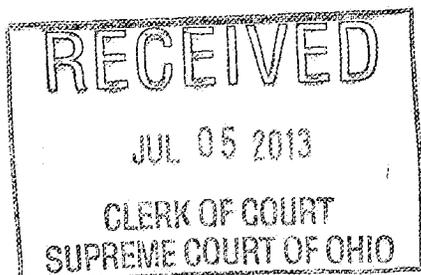
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RELATOR, PRO SE

COUNSEL FOR RESPONDENT

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Warren Correctional Institution  
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Now comes Timothy J. McGinty, Prosecuting Attorney of Cuyahoga County, Ohio, by and through his undersigned assistant and on behalf of respondent the State of Ohio, and respectfully requests that this Court grant Respondent's Motion To Dismiss Relator's Petition for Writ of Mandamus for the reasons stated in the attached brief.

Respectfully submitted,

TIMOTHY J. MCGINTY  
Cuyahoga County Prosecuting Attorney

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## BRIEF IN SUPPORT

### **I. PROCEDURAL HISTORY OF THE CASE**

On August 30, 2010, relator Raymond Moss pled guilty in Cuyahoga County Court of Common Pleas case number CR-10-537410-A to attempted murder in violation of R.C. 2923.02/R.C. 2903.02(A) with a one-year firearm specification under R.C. 2941.141, a three-year firearm specification under R.C. 2941.145, and a forfeiture specification under R.C. 2941.1417 (Count 1), and to aggravated burglary in violation of R.C. 2911.11(A)(2) with a one-year firearm specification under R.C. 2941.141, a three-year firearm specification under R.C. 2941.145, and a forfeiture specification under R.C. 2941.1417 (Count 2). Counts 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 were nolle.

Moss was subsequently sentenced to three-years for the firearm specification in each of Counts 1 and 2 with all firearm specifications merging for purposes of sentencing, to be served prior to and consecutive with an eight-year sentence as to each of the base charges in Counts 1 and 2 to be served consecutively to each other for a total sentence of nineteen years.

On January 24, 2013, Moss filed a motion to vacate sentence and to re-sentence. On February 4, 2013, the State of Ohio filed a brief in opposition to Moss' motion to vacate sentence and to re-sentence. On February 8, 2013, the trial court issued a journal entry denying Moss' motion to vacate sentence and to re-sentence.

On June 20, 2013, Moss filed a complaint for writ of mandamus ("Complaint") asking this Court to compel respondent Judge Strickland-Saffold to issue a ruling on Moss' motion to vacate sentence and to re-sentence filed on January 24, 2013.

## **II. RELATOR'S COMPLAINT IS DEFECTIVE AND SHOULD BE DISMISSED**

### **A. Relator's Complaint Fails to Comply With R.C. 2731.04**

Under R.C. 2731.04 a party filing an action for a writ of mandamus must be in the name of the state on relation of the person applying. Moss' Complaint is captioned "Raymond Moss v. Honorable Judge Shirley Strickland-Saffold". The failure of Moss to properly caption his writ of mandamus in the name of the state as mandated by R.C. 2731.04 warrants dismissal of his Complaint. *Rust v. Lucas Cty. Board of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, ¶ 16. Therefore, Respondent respectfully requests that this Court dismiss Moss' complaint for writ of mandamus.

### **B. Relator's Affidavit Fails To Comply With R.C. 2969.25(A)**

Under R.C. 2969.25(A) an inmate who commences a civil action against a government entity or employee must file an affidavit that contains a description of each civil action or appeal of a civil action that an inmate has filed in the previous five years in any state or federal court. Moss has failed to attach an affidavit of prior actions to his Complaint as mandated by R.C. 2969.25(A).

The failure of Moss to comply with R.C. 2969.25(A) warrants dismissal of his Complaint. *State ex rel. Norris v. Giavasis*, 100 Ohio St.3d 371, 2003-Ohio-6609, at ¶ 4 (failure to comply with R.C. 2969.25(A) subjects complaint for writ of mandamus to dismissal).

### **C. Relator's Affidavit Fails To Comply With R.C. 2969.25(C)**

Under R.C. 2969.25(C) an inmate who files a complaint against a government entity or employee who seeks waiver of prepayment of the court's full filing fees must file with the complaint a waiver that contains: (1) a statement that sets forth the balance

in the inmate account for 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.

Moss filed an affidavit of indigency in which he indicates that he is unable to pay the cost/fees associated with the accompanying legal matter, only earns \$17.00 each month, and has no property or anything of value. Moss' affidavit fails to set forth the balance in his inmate account for the preceding six months, as certified by the institutional cashier, and a statement that sets forth all other cash and things of value owned by the inmate. Porter's failure to comply with the requirements of 2969.25(C) warrants dismissal of his Complaint. *State v. Story*, 104 Ohio St.3d 343, 2004-Ohio-6565 (inmate's failure to comply with R.C. 2969.25(C)(1) required dismissal of complaint for writ of mandamus); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117 (Court affirmed dismissal of writ of mandamus for relator's failure to comply with requirements of R.C. 2969.25(C)).

### **III. Relator's Complaint if Moot**

In his Complaint Moss is asking this Court to compel respondent Judge Strickland-Saffold to issue a ruling on Moss' motion to vacate sentence and to re-sentence filed on January 24, 2013. However, respondent Judge Strickland Saffold denied Moss' motion to vacate sentence and to re-sentence on February 13, 2013. (See journal entry issued by trial court on February 13, 2013, attached to the "Notice of Judicial Action" filed contemporaneously with this Motion and identified as Exhibit A<sup>1</sup>).

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<sup>1</sup> Said "Notice of Judicial Action" appends Judge Saffold's journal entry of February 13, 2013, in Cuyahoga County Court of Common Pleas case number CR-10-537410-A. (Exhibit A).

As a result, Moss' Complaint is moot. *State ex rel. Fontanella v. Kantos*, 117 Ohio St.3d 514, 2008-Ohio-1431, ¶ 6 ("Neither procedendo nor mandamus will compel the performance of a duty that has already been performed.").

#### **IV. Conclusion**

For the foregoing reasons, respondent Judge Strickland Saffold respectfully requests that this court grant her Motion To Dismiss Relator's Complaint For Writ Of Mandamus.

By:



James E. Moss (0061958)  
Assistant Prosecuting Attorney  
Attorney for Respondent

#### **SERVICE**

A copy of the foregoing Respondent's Motion To Dismiss Relator's Petition For Writ Of Mandamus was mailed this 3<sup>rd</sup> day of July, 2013, by regular U.S. Mail to Raymond Moss, Pro Se, Inmate # 591754, at Warren Correctional Institution, P.O. Box 120, 5787 State Route 63, Lebanon, Ohio 45036.

By:



James E. Moss  
Assistant Prosecuting Attorney