

ORIGINAL

IN THE SUPREME COURT OF OHIO

MARTINE P. GOODEN ; CASE NO 13-1159

Appellee

;

VS

THIRD DISTRICT COURT OF APPEALS
CASE NO 9-13-0021

JULIE KAGEL
MARION COUNTY CLERK OF COURTS

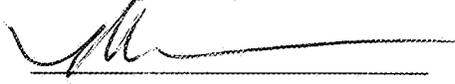
Appellant

NOTICE OF APPEAL

Now comes the Defendant Appellant Martine P. Gooden hereby give Notice of Appeal to the Ohio Supreme Court from the decision render from the Third Appellant District. Of Appeals on July 10th 2013 from the decision of the Appelee- Respondent Julie Kagel. Appellant humbly and respectfully request Appointment of Counsel from the Ohio Public Defender Office to assist the Appellant with his appeal in this cause.

FILED
JUL 22 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Respectfully Submitted



Martine P. Gooden
519-106
1800 Harmon Ave Zone B
Columbus, Ohio 43223

RECEIVED
JUL 22 2013
CLERK OF COURT
SUPREME COURT OF OHIO

CERTIFICATE OF SERVICES

A true copy of the Notice of Appeal, Appointment of Counsel was sent to the Appellee
Julie Kagel at the Office of the Marion county Clerk of Courts on this 20th day of July 2013.



ACA
CF ✓

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY

STATE OF OHIO EX REL.,
MARTINE P. GOODEN,

FILED
COURT OF APPEALS

JUL 10 2013 ps

RELATOR,

MARION COUNTY CLERK OF COURTS
JULIE KAGEL, CLERK

CASE NO. 9-13-21

v.

JULIE KAGEL,
MARION COUNTY CLERK OF COURTS,

JUDGMENT
ENTRY

RESPONDENT.

This cause comes before the Court upon Relator's petition for writ of mandamus, Respondent's response to the Court's order for alternative writ, and Relator's brief in support of his petition.

Although pled as a petition for writ of mandamus for the purpose of compelling Respondent to provide a copy of an alleged public record, the "victim loss statements" purportedly filed in Relator's criminal case, Relator's brief in support makes clear that he actually seeks an order dismissing the restitution order issued as part of the sentence in his criminal case. Respondent's response to the petition states that she is not in possession of the documents requested and then defends the restitution order on grounds of res judicata.

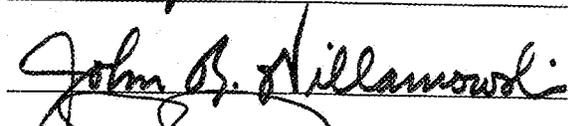
Upon consideration of same, the Court finds that the action is not filed with the proper, accompanying documentation required by R.C. 2969.25. See *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421 (1998); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285 (1997).

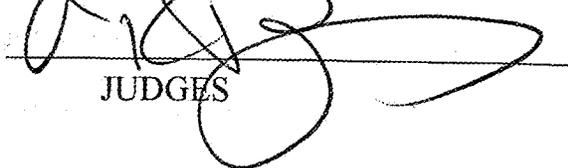
The Court further finds that, by failing to attach any proof of his request and Respondent's denial, Relator makes only an unsubstantiated averment of the existence of the noted documents. Furthermore, Respondent states that the documents are not filed as part of any record in any case in her custody and control, and Relator fails to show by notation in the docket or any other means that the documents were filed. Therefore, Respondent does not have a clear legal duty to provide a copy of a document not under her custody and control, and the instant petition must be dismissed for failure to state a claim for relief in mandamus. Finally, we note that the validity of any restitution order entered in a criminal proceeding is not properly raised in an action for writ of mandamus concerning a request for public records.

Accordingly, for the reasons set forth herein, Respondent's motion is well taken and the petition should be dismissed.

It is therefore **ORDERED** that the petition for writ of mandamus be, and hereby is, dismissed at the costs of the Relator for which judgment is hereby rendered.






JUDGES

DATED: JULY 10, 2013
/hlo