

IN THE SUPREME COURT OF OHIO

STATE EX REL. ROBERT HARSH,	:	
	:	
Relator,	:	Case No. 2013-1561
	:	
v.	:	Original Action in Mandamus
	:	
ROBERT RINGLAND,	:	
ADMINISTRATIVE JUDGE	:	
	:	
Respondent.	:	

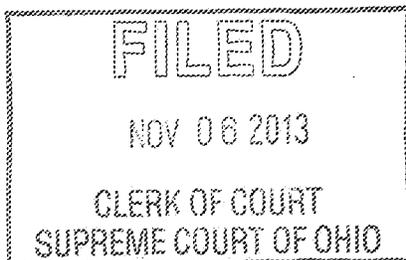
RESPONDENT'S MEMORANDUM IN OPPOSITION
TO MOTION TO STRIKE

ROBERT HARSH #547-305
London Correctional Institution
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London, Ohio 43140

Pro se Relator

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Administrative Judge Robert Ringland of the
Twelfth District Court of Appeals



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**RESPONDENT’S MEMORANDUM IN OPPOSITION
TO MOTION TO STRIKE**

In response to Relator Robert Harsh’s *Motion to Strike* Counsel for Respondent assert that, due to a clerical error, Exhibit A was not attached to Respondent’s *Motion to Dismiss* filed October 24, 2013. See October 24, 2013 Motion to Dismiss. The undersigned counsel for Respondent apologize for any confusion that this omission has caused to Relator and this Court. The exhibit, attached hereto as Exhibit A, is a copy of the Twelfth District Court of Appeals’ August 28, 2013 Entry Granting Judge Oney’s Motion to Dismiss, filed in *State ex rel. Harsh v. Oney*, Case No. CA2012-07-134 (12th Dist. Aug. 28, 2013). “[T]he court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter.” *State ex rel. Neff v. Corrigan*, 75 Ohio St.3d 12, 14, 661 N.E.2d 170 (1996) quoting Civ.R. 12(F). Relator does not argue that the *Motion to Dismiss* falls within Civ. R. 12(F), and he

offers no support for his position that an entire motion should be dismissed due to the failure to attach an exhibit.

This is especially true where, as here, the exhibit at issue—“Respondent’s Exhibit A”—is a public record of which this Court may take judicial notice.¹ See *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 26 (finding that a court can take judicial notice of appropriate matters in determining Civ.R.12(B)(6) motion without converting it to a motion for summary judgment); *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, ¶ 10 (determining it was appropriate to take judicial notice of a pleading) citing *Stutzka v. McCarville*, 420 F.3d 757, 761, fn.2 (taking judicial notice of judicial opinions and public records on motion to enlarge record in appeal). Further, the Court may take judicial notice of the existence of the entry without its physical attachment. *State ex rel. Everhart*, 2007-Ohio-4798, ¶¶ 7-9 (determining that the Court could take judicial notice of its dismissal of an earlier appeal to dismiss a complaint for prohibition even when that dismissal was not part of the record in the prohibition action).

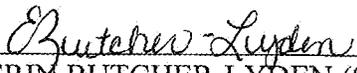
Additionally, Relator moves for sanctions, which this Court should deny. As discussed above, Counsel for Respondent inadvertently omitted attaching Exhibit A, and ultimately, Counsel sent Relator the same documents filed with this Court.

¹ Admittedly confusing, Respondent’s Exhibit A is also mistitled “Respondent’s Exhibit 3” on p. 2 of the motion to dismiss, which is an inadvertent typo that Respondent’s counsel seeks here to clarify and correct.

Accordingly, Respondent here attaches a copy of the August 28, 2013 entry and respectfully asks that this Court take judicial notice of the entry and deny Relator's motion to strike.

Respectfully submitted,

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Ohio Attorney General


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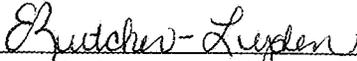
Counsel for Respondent
Administrative Judge Robert Ringland of the
Twelfth District Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Respondent's Memorandum in Opposition* was filed with the Court and served by regular U.S. mail, postage prepaid, on November 6, 2013, to the following:

ROBERT HARSH #547-305
London Correctional Institution
P. O. Box 69
London, Ohio 43140

Pro se Relator


ERIN BUTCHER-LYDEN (0087278)
Assistant Attorney General

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

FILED
2012 AUG 28 PM 2:33

STATE OF OHIO ex rel. MARY L. SWAIN
ROBERT HARSH, BUTLER COUNTY
CLERK OF COURTS

CASE NO. CA2012-07-134

Relator, : ENTRY GRANTING MOTION TO
DISMISS

vs.

JUDGE PATRICIA ONEY,

Respondent.

FILED BUTLER CO.
COURT OF APPEALS

AUG 28 2012

MARY L. SWAIN
CLERK OF COURTS

The above cause is before the court pursuant to a complaint for writ of mandamus filed by relator, Robert Harsh, on July 16, 2012, and a motion to dismiss filed by counsel for respondent, Judge Patricia Oney, on August 3, 2012.

Relator is currently incarcerated at Lebanon Correctional Institution. On March 17, 2007, relator was sentenced to a total of seven years imprisonment after being convicted by a jury of operating a motor vehicle under the influence, a fourth degree felony, and a three-year specification for having been previously convicted of or pleaded guilty to five or more equivalent offenses within 20 years. Relator was also convicted of driving under OVI suspension and speeding. Respondent, Judge Patricia Oney, is Judge of the Butler County Court of Common Pleas and presided over the jury trial that resulted in relator's convictions.

The mandamus complaint seeks an order from this court vacating "the manifestly, facially void judgment entry and discharge the relator whom has been falsely imprisoned ***."

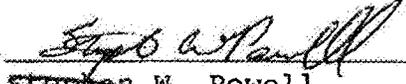
To be entitled to a writ of mandamus, relator must establish (1) a clear legal right to the requested relief; (2) that the respondent has a clear legal duty to perform the requested relief; and (3) that he has no adequate remedy in the ordinary course of law. *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 1995-Ohio-130.

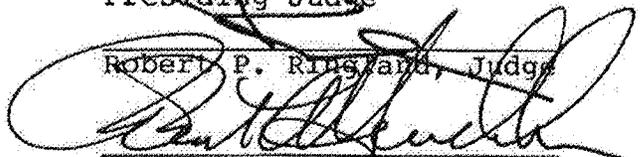
Upon consideration, relator is not entitled to a writ of mandamus. A relator who has unsuccessfully availed himself or herself of available remedies at law is not entitled to re-litigate the same issues by means of mandamus. *State ex rel. Fred Stecker Lincoln-Mercury, Inc. v. Ohio Motor Vehicle Dealers Bd.*, 18 Ohio St.3d 391 (1985). Mandamus will not lie when a party has or had an adequate remedy at law. *State ex rel. Stanley v. Cook*, 146 Ohio St. 348 (1946); *Gannon v. Gallagher*, 145 Ohio St. 170 (1945). Additionally, res judicata bars an action in mandamus seeking to obtain relief that has been previously requested and denied. *State ex rel. Carroll v. Corrigan*, 91 Ohio St.3d 331, 2001-Ohio-54.

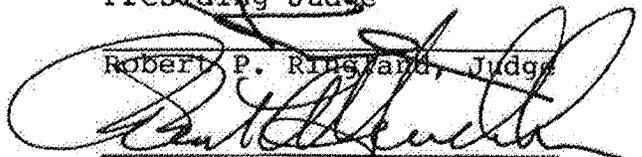
As is evident from the lengthy affidavit of prior civil actions attached to the complaint for mandamus and the memorandum in support of respondent's motion to dismiss, relator has extensively litigated his convictions and thus has or had an adequate remedy at law which precludes mandamus.

Upon consideration of the foregoing, the court concludes that relator has failed to state a claim upon which relief can be granted. Accordingly, the motion to dismiss is with merit and hereby GRANTED. This cause is hereby DISMISSED, with prejudice, costs to relator.

IT IS SO ORDERED.


Stephen W. Powell,
Presiding Judge


Robert P. Rinsland, Judge


Robert A. Hendrickson, Judge