

MOTION TO DISMISS

Pursuant to S. Ct. Prac. R. 12.04(A)(1) and Civ. R. 12(B)(1) & (6), Respondents (1) City of Columbus; (2) Franklin County Municipal Court; (3) Franklin County Municipal Court Traffic Violations Bureau; and (4) Columbus Police Officer Windsor do hereby jointly and respectfully move this Court for an order dismissing the complaint filed by Relator Faruq El Bey on November 21, 2013. The reasons for this motion are set forth more fully in the following memorandum in support.



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MEMORANDUM IN SUPPORT

I. STATEMENT OF FACTS

On November 21, 2013, pro se Relator Faruq El Bey (also known as Ricco Lamont Gaston) commenced an original action before this Court by filing three documents with the Clerk of this Court. The first was a “Legal Notice of Removal,” which both the Clerk and this Court have interpreted to be a complaint in quo warranto, mandamus, habeas corpus, prohibition, and procedendo. The second was an “Affidavit of Financial Statement,” and the third was an “Affidavit of Fact.” These documents consist of mostly nonsensical jargon that attempts to sound legal, and they contain a confusing amalgam of purported quotations from—and putative references to—various real and fictional cases, statutes, treaties, and historical records. Thus, El Bey’s would-be claims are nothing if not difficult to decipher.

Essentially, it appears that El Bay takes issue with three separate traffic stops and the legal proceedings that may have followed. See COMPLAINT at p.3, *Petitioner* & COMPLAINT at p.3 *Cause of Action* ¶¶ 1-3. The first such stop occurred on May 4, 2013. El Bey claims he was detained by an Ohio Highway Patrol Officer who stated that El Bey was in violation of R.C. 4513.263(B)(1), which makes it unlawful for one to operate an automobile on any street or highway without wearing one’s seatbelt. See COMPLAINT at 3 (¶ 2). The second traffic stop about which El Bey complains was on May 29, 2013. El Bay claims that he was detained by another Ohio Highway Patrol Officer who stated that he was again in violation of R.C. 4513.263(B)(1). The final traffic stop was on August 29, 2013. El Bey claims that he was detained by a Columbus Police Officer named “Windsor” with a Badge Number of 1228. El Bey further claims that Officer Windsor stated that El Bey was in violation of Columbus City Code 2113.03, which makes is unlawful to travel at excessive rates of speed. After El

Bey presented some form of identification to Officer Windsor, Officer Windsor demanded that El Bey surrender his car keys and ordered El Bey to exit his vehicle. When El Bey refused, Officer Windsor placed El Bey in handcuffs and later released him after presenting him with a summons.

It should be noted that El Bey never actually denies that he was in violation of R.C. 4513.263(B)(1) or Columbus City Code 2113.03 when he was detained on May 4, May 29, or August 29, 2013. Rather, he offers various theories as to why those laws do not apply to him, why the law enforcement officers at issue lacked authority to enforce those laws against him personally, and why the courts of this state have no authority over him. Ultimately, El Bey's would-be claims before this Court rest entirely upon his erroneous belief that he is not subject to the follow the laws of this State and that neither law enforcement officers nor the courts of this State have authority to enforce its laws against him.

II. MOVING RESPONDENTS

Although El Bey refers to those parties that he has named in this original action as "Plaintiffs," Sup. Ct. Prac. R. 12.03 notes such parties shall be referred to as "respondents." Moreover, because the names that El Bey assigns to the various respondents in this case is almost as confusing as the allegations he makes throughout his filings, the respondents moving for dismissal within this motion (i.e., the "Moving Respondents") will take a moment to explain who they are and why they believe El Bey intended to name them.

A. THE CITY

The first respondent named in El Bey's complaint is the "City of Columbus Police Department," which is actually known as the Columbus Division of Police (or the "CPD").

The CPD is an administrative division of the City, see COLUMBUS CITY CHARTER 97(1)(a), and under Ohio law, a police department is non sui juris and cannot be sued as a legal entity separate and apart from the local government that it serves. See, e.g., McDade v. City of Cleveland, 8th Dist. No. 98415, 2012-Ohio-5515, ¶¶ 9-11 & n. 1; Rieger v. Marsh, 2nd Dist. No. 24581, 2011-Ohio-6808, ¶¶ 12-20; Brady v. Bucyrus Police Department, 194 Ohio App. 3d 574, 2011-Ohio-2460, 957 N.E.2d 339, ¶ 19 (3rd Dist.); Smith v. McBride, 10th Dist. No. 09AP-571, 2010-Ohio-1222, ¶ 8. Accordingly, the Moving Respondents assume that El Bey meant to name the City of Columbus, Ohio (or the “City”) as a respondent in this action, and the City now moves for dismissal on behalf of itself and the CPD.

B. THE MUNICIPAL COURT

The second respondent named in El Bey’s complaint is the “State of Ohio Superior Court.” Of course, there is no “Superior Court” in the State of Ohio. Nonetheless, because the facts about which El Bey complains were traffic stops and the legal proceedings that may have followed, the Moving Respondents assume El Bey intended to name as a respondent the Franklin County Municipal Court (or the “Municipal Court”), which has jurisdiction over alleged traffic violations that are committed within Franklin County. See R.C. 1901.01, 1901.02, 1901.20. Accordingly, the Municipal Court moves for dismissal on behalf of itself and the “Superior Court.”

C. THE BUREAU

The third respondent named is the “FCMC Traffic Violations Bureau.” This presumably refers to the Franklin County Municipal Court’s Traffic Violations Bureau (or the “Bureau”). The Bureau is actually an administrative division of the Municipal Court. See FRANKLIN COUNTY MUNICIPAL COURT LOCAL RULES 5.04. Because the Bureau is non sui juris for

the same reasons as the CPD, see, e.g., State ex rel. Scott v. City of Cleveland, 166 Ohio App. 3d 293, 2006-Ohio-2062, 850 N.E.2d 747, ¶ 7 (8th Dist.), the Municipal Court moves for dismissal on behalf of the Bureau as well.

D. OFFICER WINDSOR

The fourth respondent named in El Bey's complaint is "Columbus Police Officer Windsor Badge Number 1228." There is no Officer Windsor within the CPD, and CPD Badge No. 1228 actually belongs to Columbus Police Officer Anthony Simon. Moreover, a review of the ticket and municipal court case referenced in El Bey's complaint reveals that the ticket was issued by Officer Simon and that Officer Simon was the Officer Complainant for that ticket, which was issued on August 29, 2013. Nonetheless, because this is a motion to dismiss based largely on Civ. R. 12(B)(6) and because proper identification of the officer who actually detained El Bey and issued the ticket on August 29, 2013, requires extraneous evidence, the Moving Respondents will continue to refer to this respondent as "Officer Windsor." Nonetheless, it must be noted the City moves for dismissal on behalf of Officer Windsor, Officer Simon, or any other Columbus Police Officer that El Bey intended to name in his complaint.

III. LAW AND ARGUMENT

There are many factual, legal, and even logical deficiencies in El Bey's filings and in his would-be claims. Fortunately, it is not necessary to expose and discuss each such failing at this time. For present purposes, and in the interests of judicial economy, the Moving Respondents will discuss only the most glaring—and arguably most fatal—deficiencies in El Bey's claims and thus demonstrate that they are entitled to dismissal.

A. THE COURT CAN IGNORE EL BEY'S LEGAL THEORIES & OPINIONS

As noted above, El Bey's would-be claims before this Court rest entirely upon his erroneous beliefs that he is not required to follow the laws of this State and that neither law enforcement officers nor the courts of this State have authority to enforce its laws against him. Nevertheless, in determining whether El Bey has stated a sufficient set of facts to survive dismissal under Civ. R. 12(B)(6), this Court is not required to accept as true the unsupported legal conclusions that are laced throughout El Bey's complaint. See York v. Ohio State Highway Patrol, 60 Ohio St. 3d 143, 147, 573 N.E.2d 1063 (1991); Mitchell v. Lawson Milk, 40 Ohio St. 3d 190, 193, 532 N.E.2d 753 (1988); Schulman v. Cleveland, 30 Ohio St. 2d 196, 198, 283 N.E.2d 175 (1972).

B. QUO WARRANTO IS NOT APPROPRIATE

To the extent El Bey asks the Court to remove any one of the Moving Respondents from office, he appears to be seeking a writ of quo warranto. See R.C. 2733.01. An action in quo warranto may be brought by an individual as a private citizen only if that individual is personally claiming title to the public office in question. See State ex rel. East Cleveland Fire Fighters' Association v. Jenkins, 96 Ohio St. 3d 68, 2002-Ohio-3527, 771 N.E.2d 251, ¶ 10; State ex rel. Coyne v. Todia, 45 Ohio St. 3d 232, 238, 543 N.E.2d 1271 (1989); State ex rel. Annable v. Stokes, 24 Ohio St. 2d 32, 32, 262 N.E.2d 863 (1970). Because nothing in El Bey's filings even hints a claim of title to any public office, El Bey lacks standing to bring an action in quo warranto.

Further, in order to obtain a writ of quo warranto, El Bey must also establish that the Moving Respondents are unlawfully holding or exercising the public office he seeks. See State ex rel. Ebbing v. Ricketts, 133 Ohio St. 3d 339, 2012-Ohio-4699, 978 N.E.2d 188, ¶ 8;

State ex rel. Newell v. City of Jackson, 118 Ohio St. 3d 138, 2008-Ohio-1965, 886 N.E.2d 846, ¶ 6. Nowhere within El Bay's filings does he allege any operative facts that would even remotely suggest this to be the case.

C. MANDAMUS IS NOT APPROPRIATE

Before a writ of mandamus can issue, El Bey must establish: (1) a clear legal right to the relief he has requested; (2) a clear legal duty on the part of the Moving Respondents to provide that relief; (3) and the lack of an adequate remedy in the ordinary course of the law. See State ex rel. Ervin v. Barker, 136 Ohio St. 3d 160, 2013-Ohio-3171, 991 N.E.2d 1146, ¶ 9; State ex rel. GMC v. Industrial Commission, 117 Ohio St.3d 480, 2008-Ohio-1593, 884 N.E.2d 1075, ¶ 9; State ex rel. Greene v. Enright, 63 Ohio St. 3d 729, 731, 590 N.E.2d 1257 (1992). As a preliminary matter, the relief requested in El Bey's filings is not itself clear. Accordingly, it cannot be said that El Bey has established any clear legal right to the relief he requests. Moreover, because El Bey's theories in this case rest entirely upon his belief that he is outside the authority of the law and public officers of this state, El Bey has actually failed to establish a clear legal right to anything. Consequently, El Bey has also failed to establish a clear legal duty on the part of any one of the Moving Respondents to provide him with whatever relief he is trying to obtain here.

In any event, to the extent El Bey is merely dissatisfied with the dispositions of the underlying legal proceedings that followed the traffic citations referenced in his filings, El Bey had (and may still have) an adequate remedy at law through a direct appeal. To the extent El Bey believes there was some sort of unlawful conduct that caused him injury, he also has an adequate remedy at law through state or federal claims for money damages. In

fact, by specifically requesting money damages from some of the respondents in this case, COMPLAINT at p.12, *Relief* ¶¶ 9–14, El Bey admits he has an adequate legal remedy.

D. HABEAS CORPUS IS NOT APPROPRIATE

Insofar as El Bey requests a writ of habeas corpus for something other than his immediate release from prison, his claim lacks merit because, in general, “habeas corpus is proper in the criminal context only if the petitioner is entitled to immediate release from prison or some other physical confinement.” Perotti v. Stine, 113 Ohio St. 3d 312, 2007-Ohio-1957, 865 N.E.2d 50, ¶ 6 (quoting Scanlon v. Brunzman, 112 Ohio St. 3d 151, 2006-Ohio-6522, 858 N.E.2d 411, ¶ 4; Cruse v. Bradshaw, 108 Ohio St. 3d 212, 2006-Ohio-663, 842 N.E.2d 513, ¶ 5; State ex rel. Smirnoff v. Greene, 84 Ohio St. 3d 165, 167, 702 N.E.2d 423 (1998)). Nothing in El Bey’s filings indicates that he is currently being held in prison or subject to some other form of physical confinement.

Moreover, habeas corpus is not generally available if the relator has an adequate remedy at law. See Jackson v. Johnson, 135 Ohio St. 3d 364, 2013-Ohio-999, 986 N.E.2d 989, ¶ 3. As discussed above in Part III.C, *supra*, El Bey has adequate remedies at law.

E. PROHIBITION IS NOT APPROPRIATE

In order to be entitled to a writ of prohibition, El Bey has to establish that: (1) the Moving Respondents were about to exercise judicial or quasi-judicial power; (2) the exercise of that power was unauthorized by law; and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law. See State ex rel. Scott v. City of Cleveland, 112 Ohio St. 3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 15; Tatman v. Fairfield County Board of Elections, 102 Ohio St. 3d 425, 2004-Ohio-3701, 811 N.E.2d 1130, ¶ 14. With respect to the first requirement, it must be noted that prohibition

is preventative, not corrective. That is, it may be invoked only to prevent the commission of some future act, not to undo acts that have already been done or to review the regularity of acts already performed. See State ex rel. LTV Steel Co. v. Gwin, 64 Ohio St. 3d 245, 248, 594 N.E.2d 616 (1992); State ex rel. Celebrezze v. Court of Common Pleas, 60 Ohio St. 2d 188, 190, 398 N.E.2d 777 (1979); State ex rel. Stefanick v. Municipal Court of Marietta, 21 Ohio St. 2d 102, 104-05, 255 N.E.2d 634 (1970). Although records from the municipal court indicate that the legal proceedings related to the three traffic stops referenced in El Bey's complaint are closed, such extraneous records are not appropriate on a Civ. R. 12(B)(6) motion. Thus, Moving Respondents note that El Bey has failed to allege any facts that would suggest any future act to be prevented.

With respect to the second and third requirements, it must be noted that, "unless jurisdiction is patently and unambiguously lacking, a tribunal having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging that jurisdiction has an adequate remedy in the ordinary course of law by appeal." State ex rel. Scott v. City of Cleveland, 112 Ohio St. 3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 16 (citing State ex rel. Estate of Hards v. Klammer, 110 Ohio St. 3d 104, 2006-Ohio-3670, 850 N.E.2d 1197, ¶ 10. That is, El Bey cannot seek a writ of prohibition as a substitute for an appeal. See State ex rel. Caskey v. Gano, 135 Ohio St. 3d 175, 2013-Ohio-71; 985 N.E.2d 453, ¶ 5 (collecting cases). To the extent that El Bey challenges the jurisdiction of the Municipal Court to hear his traffic cases, he had an adequate remedy at law by way of appeal.

Finally, although El Bey offers many erroneous theories as to why the Municipal Court lacked authority over him, he has not put forth a single *legitimate* legal theory that anyone has exercised any type of power over him that was not properly authorized by law.

F. PROCEDENDO IS NOT APPROPRIATE

Procedendo is “an order from a court of superior jurisdiction to proceed to judgment and does not lie to control or interfere with ordinary court procedure. Procedendo does not lie where . . . there is no clear legal right to such relief.” State ex rel. Ratliff v. Marshall, 30 Ohio St. 2d 101, 102, 282 N.E.2d 582 (1972); State ex rel. Miley v. Parrott, 77 Ohio St. 3d 64, 67, 671 N.E.2d 24 (1996). Ultimately, it is an “inferior court’s refusal or failure to timely dispose of a pending action” that the “writ of procedendo is designed to remedy.” Parrott at 65 (quoting State ex rel. Dehler v. Sutula, 74 Ohio St. 3d 33, 35, 656 N.E.2d 332 (1995)); State ex rel. Levin v. City of Sheffield Lake, 70 Ohio St. 3d 104, 110, 637 N.E.2d 319 (1994). Nowhere in El Bey’s filings is there any claim that an action remains pending in any court inferior to this once or that the inferior court has in any way refused or failed to timely dispose of such an action.

G. THE COURT LACKS JURISDICTION TO GRANT DECLARATORY RELIEF

To the extent that El Bey’s filings could be interpreted as requesting declaratory judgment, this Court lacks original jurisdiction over claims for declaratory judgment. See State ex rel. Ministerial Day Care Association v. Zelman, 100 Ohio St. 3d 347, 2003-Ohio-6447, 800 N.E.2d 21, ¶ 22. In any event, the declarations requested by El Bey are either so elementary that they would not resolve any real or imagined controversy at issue or are merely wrong and thus contrary to well-established law. In either event, El Bey has failed to state a cause of action for declaratory relief.

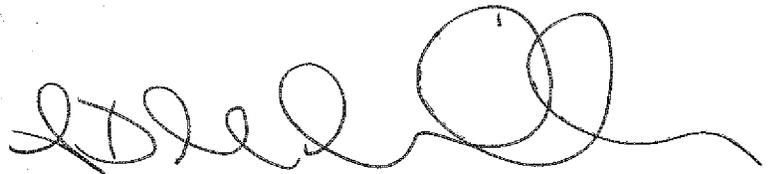
H. THE COURT LACKS JURISDICTION TO GRANT MONETARY RELIEF

To the extent that El Bey specifically seeks money damages from any respondent, this Court lacks original jurisdiction over claims for money damages. See State ex rel.

Cleveland Municipal Court v. Cleveland City Council, 34 Ohio St. 2d 120, 122, 296 N.E.2d 544 (1973). In any event, El Bey fails to state any operative facts that would otherwise entitle him to monetary relief under any cognizable legal theory. Thus, El Bey has failed to state a cause of action for money damages.

IV. CONCLUSION

For the reasons stated above, Respondents (1) City of Columbus; (2) Franklin County Municipal Court; (3) Franklin County Municipal Court Traffic Violations Bureau; and (4) Columbus Police Officer Windsor jointly and respectfully move this Court for an order dismissing the complaint filed by Relator Faruq El Bey on November 21, 2013.



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CERTIFICATE OF SERVICE

I certify that a copy of this Motion to Dismiss was sent by ordinary U.S. mail to the following individual(s) on **December 13, 2013**:

Faruq El Bey
c/o 792 Brentnell Avenue
Columbus, Ohio 43219

Relator, Pro Se

A handwritten signature in black ink, appearing to read "Andrew D.M. Miller", written over a horizontal line.

Andrew D.M. Miller (0074515)