

ORIGINAL

IN THE SUPREME COURT OF OHIO

FARUQ EL BEY,	:	
	:	
Relator,	:	Case No. 2013-1847
	:	
v.	:	Original Action in Mandamus and
	:	Procedendo
CITY OF COLUMBUS POLICE	:	
DEPARTMENT, et al.	:	
	:	
Respondents.	:	

**MOTION TO DISMISS OF RESPONDENTS
SUPREME COURT OF OHIO AND STATE OF OHIO**

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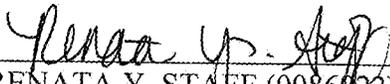
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MOTION TO DISMISS OF RESPONDENTS
SUPREME COURT OF OHIO¹ AND STATE OF OHIO

Pursuant to S.Ct.Prac.R. 12.04 and Ohio Civ. Rules 12(B)(1) and 12(B)(6), Respondents, Supreme Court of Ohio and State of Ohio, hereby move this Court to dismiss Relator's petition for writs of quo warranto, mandamus, habeas corpus, prohibition, and procedendo. Respondents have attached a memorandum in support.

Respectfully submitted,

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¹ Relator names the "State of Ohio Superior Court" located on 65 South Front Street in Columbus, Ohio as a Respondent in this action. Because such an entity does not exist, counsel for the Supreme Court of Ohio construes all references to the "State of Ohio Superior Court" to mean the Supreme Court of Ohio which is the entity located at the address listed by Relator in his Complaint. All internal references to the Supreme Court of Ohio address arguments that Relator raises against the State of Ohio Superior Court.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Mr. Faruq El Bey (the “Relator”) attempts to challenge three separate traffic citations issued to him by seeking monetary damages and an order that the “suits/ticket/complaint # 1534640 be dismissed, discredited and expunged from the record.” (Complaint, p. 3, ¶¶ 1-3; Complaint, p. 10, ¶ 72; Complaint, p. 12, ¶ 10.) Relator names several police officers, the City of Columbus Police Department, and the State of Ohio Superior Court as Respondents in this original action in quo warranto, mandamus, habeas, prohibition, and procedendo. (Complaint, p. 1.) Relator’s claims against the Supreme Court of Ohio must be dismissed for at least two reasons. First, this Court lacks jurisdiction over Relator’s claims for monetary damages. Second, Relator has not stated any claims against the Supreme Court of Ohio sounding in quo warranto, mandamus, habeas corpus, prohibition, or procedendo. Moreover, Relator’s solitary claim for monetary damages against the State of Ohio must be dismissed because this Court lacks jurisdiction over this claim. As set forth below, Relator’s claims against the State of Ohio and the Supreme Court of Ohio should be dismissed.

II. LEGAL ARGUMENT

A. **This Court lacks subject matter jurisdiction over Relator’s claims for monetary damages against the Supreme Court of Ohio and the State of Ohio.**

Because this Court lacks jurisdiction over claims for monetary damages against the State of Ohio, these claims should be dismissed. Rather, the Court of Claims of Ohio is vested with exclusive and original jurisdiction to determine the liability of state offices. R.C. 2743.02(F). The definition of “state” includes “the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and

other instrumentalities of the state.” R.C. 2743.01(A). The Court of Claims’ exclusive jurisdiction empowers the court “to adjudicate an action or class of actions to the exclusion of all other courts.” *Johns v. Univ. of Cincinnati Med. Assocs.*, 101 Ohio St.3d 234, 2004-Ohio-824, 804 N.E.2d 19, ¶ 26 (citing to Black’s Law Dictionary 856 (7th Ed.1999)). Original jurisdiction empowers the Court of Claims “to hear and decide a matter before any other court can review the matter.” *Id.*

This Court lacks jurisdiction to award Relator the monetary damages from the “State of Ohio Superior Court” and the State of Ohio that he seeks. See, R.C. 2743.02(F). (Complaint, p. 12, ¶¶ 9, 10.) Both the Supreme Court of Ohio and the State of Ohio are “instrumentalit[ies] of the state.” R.C. 2743.01(A). As a result, the Court of Claims has original jurisdiction to resolve issues of liability involving the Supreme Court of Ohio and the State of Ohio “before any other court” has reviewed these claims. R.C. 2743.01(A); *Johns*, 2004-Ohio-824 at ¶ 26. Accordingly, this Court should dismiss Relator’s claims for monetary damages under Civ.R. 12(B)(1) because this Court lacks subject matter jurisdiction over them.

B. Relator’s has failed to state a claim against the Supreme Court of Ohio.

1. Standard of Review

A motion to dismiss for failure to state a claim upon which a court can grant relief challenges the sufficiency of the complaint itself, not evidence outside of the complaint. *Volbers-Klarich v. Middletown Mgmt, Inc.*, 125 Ohio St.3d. 494, 2010-Ohio-2057, ¶ 11. In determining whether to grant a motion to dismiss pursuant to Civ. R.12 (B)(6), a court “must presume that all factual allegations in the complaint are true and must make all reasonable inferences in favor of the non-moving party.” *Mitchell v. Lawson Milk Co.*,

40 Ohio St.3d 190,192, 532 N.E.2d 753 (1984). It must appear beyond doubt that plaintiff can prove no set of facts entitling him or her to relief. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 71 327 N.E.2d 753 (1975), syllabus.

2. Relator has not stated a quo warranto claim against the Supreme Court of Ohio.

For a writ of quo warranto to issue, “a relator must establish (1) that the office is being unlawfully held and exercised by respondent, and (2) that relator is entitled to the office.” *State ex rel. Paluf v. Feneli*, 69 Ohio St.3d 138, 141, 630 N.E.2d 708 (1994). A person other than the attorney general or a prosecuting attorney can bring a quo warranto action only when that person is personally claiming title to a public office. *State ex rel. Hawthorn v. Russell*, 107 Ohio St.3d 269, 2005-Ohio-6431, 838 N.E.2d 666, ¶ 6.

Relator filed this action challenging the issuance of several traffic citations. (Complaint, p. 3, ¶¶ 1-3; Complaint, p. 10, ¶ 72.) He does not challenge the qualifications of any individual officeholder, or allege that he is entitled to hold a particular public office. Thus, he does not allege facts sufficient to state a cognizable quo warranto claim and any such claim must be dismissed.

3. Similarly, Relator has not stated cognizable claims in mandamus or procedendo against the Supreme Court of Ohio.

A writ of mandamus or procedendo will issue only where three requirements are met: (1) the relator must have a clear legal right to the requested relief; (2) the respondent must have a clear legal duty to perform the requested relief; and (3) the relator must have no adequate remedy at law. *State ex rel. Van Gundy v. Indus. Comm'n*, 111 Ohio St.3d 395, 2006-Ohio-5854, 856 N.E.2d 951, ¶ 13 (mandamus), citing *State ex rel. Luna v. Huffman*, 74 Ohio St.3d 486, 487, 659 N.E.2d 1279 (1996); *State ex rel. Sawicki v. Court*

of Common Pleas of Lucas County, 126 Ohio St.3d 198, 2010-Ohio-3299, ¶ 11 (procedendo).

Here, Relator fails to establish any of these elements in his mandamus claim against the Supreme Court of Ohio. It is well established that “in mandamus proceedings, the creation of the legal duty that a relator seeks to enforce is the distinct function of the legislative branch of government.” *State ex rel. Woods v. Oak Hill Cmty. Med. Ctr.*, 91 Ohio St.3d 459, 461, 2001-Ohio-96, 746 N.E.2d 1108; *State ex rel. Brettrager v. Newburgh Hts.*, 89 Ohio St.3d 272, 274, 730 N.E.2d 981 (2000). In order to meet the first prong required for a writ of mandamus, Relator must allege a duty established by the legislature and codified in the Ohio Revised Code. Relator requests that the “suits/ticket/complaint # 1534640 be dismissed, discredited and expunged from the record.” (Complaint, p. 3, ¶¶ 1-3; Complaint, p. 10, ¶ 72.) However, Relator has not and cannot point to any statute that requires the Supreme Court of Ohio to perform any duty with respect to Relator’s traffic violations. Moreover, because Relator cannot identify any statutory duty on the part of the Supreme Court of Ohio to “dismiss[], discredit[], or expunge” any of Relator’s traffic violations or citations, Relator has no corresponding clear legal right to the relief he is seeking. *Id.* As a result, Relator fails to state a claim upon which relief may be granted, which should result in dismissal of this action.

Relator’s action for a writ of procedendo must also fail. A writ of procedendo is appropriate “when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.” *State ex rel. Bd. of State Teachers Retirement Sys. of Ohio v. Davis*, 113 Ohio St.3d 410, 2007-Ohio-2205, ¶ 34. For a writ of procedendo to

issue, three requirements must be met: (1) the relator must have a clear legal right to the requested relief; (2) the respondent must have a clear legal duty to perform the requested relief; and (3) the relator must have no adequate remedy at law. *State ex rel. Sawicki v. Court of Common Pleas of Lucas County*, 126 Ohio St.3d 198, 2010-Ohio-3299, ¶ 11. With respect to the Supreme Court of Ohio, Relator’s procedendo claim must fail because he has not alleged that the Court has refused or delayed to proceed to judgment. Indeed, Relator’s complaint contains no allegations that any of Relator’s traffic violation matters are before the Supreme Court of Ohio. Because Relator has failed to state a claim for procedendo, this claim against the Supreme Court of Ohio must also be dismissed.

Because Relator is unable to establish any of the elements for a writ in mandamus or a writ in procedendo to issue, his claims against the Supreme Court of Ohio must be dismissed.

a. Moreover, Relator’s mandamus complaint must be dismissed because it is procedurally defective.

In addition, Relator’s mandamus action fails to satisfy the requirements of R.C. 2731.04 and must be dismissed. Under this provision, an “[a]pplication for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying . . .” R.C. 2731.04. Ohio courts have routinely recognized that a relator’s failure to bring a petition in the name of the State is grounds for dismissal. *See, e.g., Maloney v. Court of Common Pleas*, 173 Ohio St. 226, 227, 181 N.E.2d 270 (1962); *Johns v. Allen*, 11th Dist. No. 2013–T–0007, 2013 Ohio-2045, ¶ 5 (“The failure to caption an original action properly constitutes sufficient grounds for dismissing the petition.”); *Howell v. Rintala*, 11th Dist. No. 2011–T–0102, 2012-Ohio-1464, ¶ 16 (“The failure to bring an action for a writ in the name of the state on the relation of the person

applying for the writ constitutes sufficient grounds to dismiss the petition.”); *Ramirez v. Richland Cnty. Common Pleas Court*, 5th Dist. No. 11CA87, 2012-Ohio-661, ¶ 2 (“Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit. Failure to comply with these requirements is grounds for dismissal.”) (internal quotations omitted).

Here, Mr. El Bey did not file a petition in the name of the State. Rather, he brings this action in his individual capacity. As such, Mr. El Bey’s complaint should be dismissed.

4. In addition, Relator’s petition for a writ of habeas corpus must fail.

Relator’s petition fails to articulate a claim for which habeas corpus relief can be granted. Significantly, “habeas corpus in Ohio is generally appropriate in the criminal context only if the petitioner is entitled to immediate release from prison or some other type of physical confinement.” *State ex rel. Smirnoff v. Greene*, 84 Ohio St.3d 165, 167, 702 N.E.2d 423 (1998) (internal citations omitted). In the present case, however, Relator does not allege any ongoing imprisonment or restraint. Rather, Relator is dissatisfied with traffic citations issued by the Columbus Police Department and Ohio Highway Patrol. (Complaint, p. 3, ¶¶ 1-3; Complaint, p. 10, ¶ 72.) However, these allegations do not meet the requirements for a writ of habeas corpus to issue and warrant dismissal of his petition for habeas corpus.

Additionally, Relator’s failure to attach a “copy of the commitment or cause of detention” papers also requires dismissal of Relator’s request for habeas relief. R.C. 2725.04 requires that paperwork documenting the petitioner’s confinement be attached to a habeas petition. Failure to attach such documents requires dismissal of the petition.

Griffin v. McFaul, 116 Ohio St.3d 30, 876 N.E.2d 527, 2007-Ohio-5506, ¶ 4. Because Relator has failed to present any documentation showing that he has been confined, Relator's petition for a writ of habeas corpus should be dismissed for this additional reason.

5. Relator has also failed to state a prohibition claim against the Supreme Court of Ohio.

Finally, Relator has not alleged any facts to support a prohibition claim against the Supreme Court of Ohio. To state a claim in prohibition, the Relator must demonstrate that the Supreme Court of Ohio: (1) is about to exercise judicial or quasi-judicial power; (2) that the exercise of such power by the Supreme Court of Ohio is unauthorized by law; and (3) that Relator has no adequate remedy in the ordinary course of law. *State ex rel. Potts v. Commission on Continuing Legal Education*, 93 Ohio St.3d 452, 455, 755 N.E.2d 886, 2001-Ohio-1586. "Prohibition is an extraordinary remedy, to be entertained with caution, and is to be exercised in the sound discretion of the court." *State ex rel. Gilligan v. Hoddinott*, 36 Ohio St.2d 127, 304 N.E.2d 382 (1973), paragraph one of syllabus; see also *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 336, 686 N.E.2d 267 (1997).

Here, Relator's failure to allege that the Supreme Court is about to exercise judicial or quasi-judicial authority with respect to his traffic citations requires dismissal of his prohibition claim. Indeed, Relator has not alleged that any of his traffic violation cases are before the Supreme Court of Ohio or that he is attempting to prevent the Supreme Court of Ohio from exercising any judicial power over these cases. As a result, Relator is not entitled to any relief in prohibition.

III. CONCLUSION

For the foregoing reasons, Respondents Supreme Court of Ohio and State of Ohio respectfully ask this Court to dismiss Relator's complaint in quo warranto, mandamus, habeas corpus, prohibition, and procedendo.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 16, 2013, a copy of the foregoing *Respondents' Motion to Dismiss* was filed with the Court and a copy was sent via regular U. S. mail to:

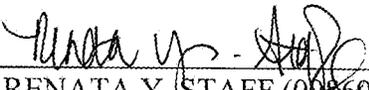
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A copy also sent to:

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