

ORIGINAL

IN THE SUPREME COURT OF OHIO

JOHN WILLIAMS,

RELATOR,

Case No. 2014-0030

-vs-

HONORABLE PETER CORRIGAN,

RESPONDENT.

RESPONDENT'S MOTION TO DISMISS

RELATOR, PRO SE

COUNSEL FOR RESPONDENT

JOHN WILLIAMS
Inmate # # 522665
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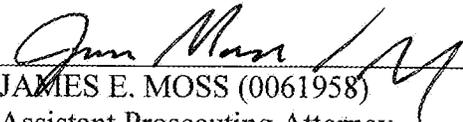
RESPONDENT,

RESPONDENT'S MOTION TO DISMISS

Now comes Timothy J. McGinty, Prosecuting Attorney of Cuyahoga County, Ohio, by and through his undersigned assistant and on behalf of respondent Judge Brian J. Corrigan, 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


JAMES E. MOSS (0061958)
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BRIEF IN SUPPORT

I. PROCEDURAL HISTORY OF THE CASE

The procedural history of Cuyahoga County Court of Common Pleas case number CR-05-463504-B has been summarized by the Eighth District Court of Appeals:

On March 17, 2005, the Cuyahoga County Grand Jury indicted appellant, along with five co-defendants, on 13 counts, including four counts of aggravated murder, in violation of R.C. 2903.01; one count of attempted murder, in violation of R.C. 2903.02 and 2923.02; three counts of aggravated robbery, in violation of R.C. 2911.01; three counts of kidnapping, in violation of R.C. 2905.01; one count of aggravated burglary, in violation of R.C. 2911.11; and one count of having a weapon while under a disability, in violation of R.C. 2923.13.^{FN1} Appellant pleaded not guilty to all charges.

FN1. The aggravated murder charges were indicted with a felony murder specification, a prior calculation and design specification, a repeat violent offender specification, a mass murder specification, a notice of prior conviction specification, and one- and three-year firearm specifications. All other counts in the indictment contained firearm specifications. Prior to trial, all specifications, except for the felony murder and firearm specifications, were dismissed.

A bench trial commenced on January 30, 2007. The court found appellant guilty on all counts of the indictment, as well as on the one- and three-year firearm specifications. On February 22, 2007, the court sentenced appellant to life without the possibility of parole until 43 years have been served. This sentence included three years for the merged firearm specification, to be served consecutive to 20 years for Counts 1 and 2 for the aggravated murder of Rebecca Cordoves and 20 years for Counts 3 and 4 for the aggravated murder of Jorge Santiago. All remaining sentences on the nine remaining counts were to be served concurrent to the 43-year sentence imposed by the court. Appellant filed a timely notice of appeal.

State v. Williams, 8th Dist. Cuyahoga App. No. 89566, 2008-Ohio-1095, ¶ 2-3. Williams' convictions were affirmed on appeal. *Id.*, motion for leave to file delayed appeal denied by *State v. Williams*, 126 Ohio St.3d 1580, 2010-Ohio-4542.

On February 24, 2009, the trial court issued a nunc pro tunc entry waiving court costs. On January 6, 2014, Williams filed a petition for writ of mandamus ("Petition") asking this

Court to compel respondent Judge Brian Corrigan¹ to issue a ruling on a motion to vacate sentence and judgment he filed on August 26, 2013.

II. WILLIAMS' PETITION IS DEFECTIVE

A. Williams Has Failed To Comply With S.Ct.Prac.R. X(4)(B)

Under S.Ct.Prac.R. X(4)(B):

All complaints shall contain a specific statement of facts upon which the claim for relief is based, shall be supported by an affidavit of the relator or counsel specifying the details of the claim, and may be accompanied by a memorandum in support of the writ. The affidavit required by this division shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit. All relief sought, including the issuance of an alternate writ, shall be set forth in the complaint.

Williams attached an affidavit to his Petition in which he states that the information and facts in his Petition are true and correct. Williams' Petition fails to include a specific statement of facts upon which the claim for relief is based as mandated by S.Ct.Prac.R. X(4)(B). The failure of Williams to attach an affidavit to his Petition as required by S.Ct.Prac.R. X(4)(B) warrants dismissal of his Petition. *State ex rel. Commt. For the Charter Amendment for an Elected Law Director v. Bay Village*, 115 Ohio St.3d 400, 2007-Ohio-5380, at ¶ 14; *State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 437, 2006-Ohio-5439, at ¶ 35.

B. Williams has Failed 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. Williams failed to attach an affidavit of prior actions as mandated by R.C. 2969.25(A).

¹ Williams incorrectly named Judge Peter Corrigan as the respondent.

The failure of Williams to comply with R.C. 2969.25(A) warrants dismissal of his Petition. *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. Williams has Failed 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.

Williams has failed to attach a statement that sets forth the balance in his inmate account for the preceding six months, as certified by the institutional cashier, and to attach a statement that sets forth all other cash and things of value owned by him. Williams' failure to comply with the requirements of 2969.25(C) warrants dismissal of his Petition. *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)).

D. Williams Has Failed 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. Williams' Petition is captioned "John Williams v. Honorable Peter Corrigan". The failure of Williams to properly caption his Petition as mandated by R.C. 2731.04 warrants dismissal of his Petition. *Rust v. Lucas Cty. Board of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, ¶16.

III. Williams' Petition is Moot

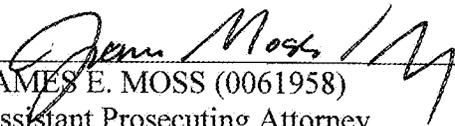
In his Petition Williams is asking this Court to compel respondent Judge Brian Corrigan to issue a ruling on a motion to vacate sentence and judgment he filed on August 26, 2013. On January 22, 2014, respondent Judge Corrigan issued a journal entry denying Williams' motion to vacate sentence and judgment he filed on August 26, 2013, as evidenced by the journal entry attached to the "Notice of Judicial Action" filed contemporaneously with this Motion and identified as Exhibit A.² As a result, Williams' Petition is moot.

IV. Conclusion

For the foregoing reasons, respondent Judge Corrigan respectfully requests that this Court grant her Motion To Dismiss Relator's Petition For Writ Of Mandamus.

Respectfully submitted,

TIMOTHY J. MCGINTY
Cuyahoga County Prosecuting Attorney



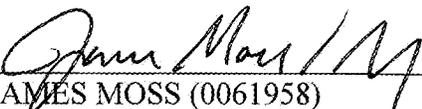
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² Said "Notice of Judicial Action" appends Judge Corrigan's journal entry denying Williams' motion to vacate sentence and judgment he filed on August 26, 2013, in case number CR-05-463504-B (Exhibit A).

SERVICE

A copy of the foregoing Respondent's motion to dismiss Relator's petition for writ of mandamus was mailed this 23rd day of January, 2014, by regular U.S. Mail to relator John Williams, Pro Se, Inmate # 522665, at Warren Correctional Institution, P.O. Box 120, 5787 State Route 63, Lebanon, Ohio 45036.

By:



JAMES MOSS (0061958)
Assistant Prosecuting Attorney