ORIGINAL

IN THE SUPREME COURT OF OHIO

JASAUN ROBERT LAWRENCE MATTICE EL,

RELATOR,

Case No. 2014-1815

-vs-

STATE OF OHIO, ENS LEGIS, CUYAHOGA COUNTY
COURT OF COMMON PLEAS ADMINISTRATIVE
JUDGE JOHN J. RUSSO,

RESPONDENT.

RESPONDENT'S MOTION TO DISMISS PETITION FOR WRIT OF MANDAMUS

RELATOR, PRO SE

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COUNSEL FOR RESPONDENT

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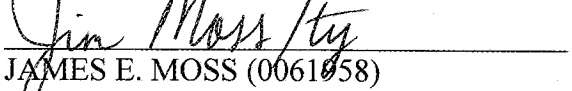
Now comes Timothy J. McGinty, Prosecuting Attorney of Cuyahoga County, Ohio, by and through his undersigned assistant and on behalf of respondent Presiding Judge John J. Russo, and respectfully requests that this Court grant Respondent's motion to dismiss Relator's petition for writ of mandamus for the reasons stated in the attached brief.

Respectfully submitted,

TIMOTHY J. MCGINTY
Cuyahoga County Prosecuting Attorney



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BRIEF IN SUPPORT

I. PROCEDURAL HISTORY OF THE CASE

On July 8, 2014, defendant Jasaun R. Mattice was indicted in Cuyahoga County Court of Common Pleas case number CR-14-586267-A on one count of grand theft in violation of R.C. 2913.02(A)(3) (Count 1), one count of conspiracy in violation of R.C. 2923.01(A)(1) (Count 2), one count of forgery in violation of R.C. 2913.31(A)(3) (Count 3), and one count of petty theft in violation of R.C. 2913.02(A)(3).

On July 8, 2014, the trial court scheduled arraignment for July 22, 2014. On July 17, 2014, Mattice filed a document he refers to in his Petition as a "writ of discovery" that is in actuality a sworn affidavit in which Mattice contends, among other things, that he has never knowingly sworn allegiance to the United States of America and that he is not liable on any government statutes and codes.

On July 22, 2014, a capias was issued for Mattice by the trial court for his failure to appear at arraignment which is pending. On August 21, 2014, Mattice filed a document he refers to in his Petition as a "default judgment" in which he demands the arraignment judge produce her "oath, delegation of authority, and public hazard bond" within seven (7) days. This document is identified as a "correspondence" on the docket of case number CR-14-586267-A.

On October 20, 2014, Mattice filed a petition for writ of mandamus ("Petition") in which he appears to be asking this Court to compel respondent Judge John J. Russo to grant his "default judgment" and issue a ruling on the document he refers to as a "writ of discovery".

II. MATTICE'S PETITION IS DEFECTIVE

Under R.C. 2731.04 an application for a writ of mandamus must be in the name of the state on relation of the person applying. Mattice improperly captioned his Petition "Jasaun Robert Lawrence Mattice El v. State of Ohio, Ens Legis, Cuyahoga County Court of Common Pleas Administrative Judge John J. Russo". Mattice's failure to properly caption his complaint in the name of the state on relation of the person applying renders his Petition defective. *Martin v. Woods*, 121 Ohio St.3d 609, 2009-Ohio-1928, ¶ 1 (Court affirmed dismissal of complaint for writ of mandamus for appellant's failure to bring the action in the name of the state under R.C. 2731.04).

III. MATTICE IS NOT ENTITLED TO A REMEDY BY WAY OF WRIT OF MANDAMUS

The requisites for mandamus are well established: (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) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118.

In his Petition Mattice appears to be asking this Court to compel respondent Judge John J. Russo to grant his "default judgment" and issue a ruling on the document he refers to in his Petition as a "writ of discovery". However, the "writ of discovery" filed by Mattice on July 17, 2014, is, in actuality, a sworn affidavit in which Mattice contends, among other things, that he has never knowingly sworn allegiance to the United States of America and that he is not liable on any government statutes and codes. The fact that the document Mattice refers to is, in fact, an affidavit and not a motion is also supported by

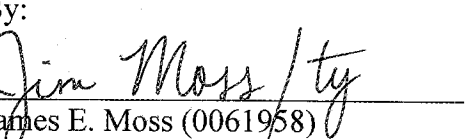
the fact that the Cuyahoga County Clerk of Court designated this document as an "affidavit of facts by specific negative averment and denial of corporate existence" in the docket of case number CR-14-586267-A.

Moreover, the document Mattice refers to as a "default judgment" in his Petition is identified as a "correspondence" by the Cuyahoga County Clerk of Court in case number CR-14-586267-A. As a result, respondent Judge Russo has no duty to issue a ruling on the affidavit filed by Mattice on July 17, 2014. In fact, it would be improper for respondent Judge Russo to issue a ruling on an affidavit, which is not a motion, that is filed in a trial court. Because Mattice has failed to establish that he has a clear legal right have his affidavit ruled upon or that respondent Judge Russo has a clear legal duty to issue a ruling on his affidavit, his Petition must be denied.

IV. CONCLUSION

For the foregoing reasons, respondent Judge Russo respectfully requests that this Court grant his motion to dismiss Relator's petition for writ of mandamus.

By:



James E. Moss (0061958)
Assistant Prosecuting Attorney
Attorney for Respondent

SERVICE

A copy of the foregoing Respondent's motion to dismiss Relator's petition for writ of mandamus was mailed this 5th day of November, 2014, by regular U.S. Mail to Jasaun R. Mattice, Pro Se, at 21483 Northlane, Oakwood Village, Ohio 44146.

By: Jim Moss /ty

James E. Moss
Assistant Prosecuting Attorney