

IN THE SUPREME COURT OF OHIO

STATE EX REL. HAKEEM SULTAANA,

RELATOR,

Case No. 2014-1855

-vs-

JUDGE PETER J. CORRIGAN,

RESPONDENT.

RESPONDENT'S MOTION TO DISMISS
PETITION FOR WRIT OF MANDAMUS

RELATOR, PRO SE

COUNSEL FOR RESPONDENT

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Inmate # 654265
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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 Judge Peter 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

/S/ JAMES E. MOSS
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BRIEF IN SUPPORT

I. Sultaana 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.

On October 27, 2014, relator Hakeem Sultaana filed a petition for writ of mandamus (“Petition”) asking this Court to compel respondent Judge Peter Corrigan to provide Sultaana with a copy of the completed jury verdict form and a copy of the presentence investigation report in his underlying criminal case of *State of Ohio v. Hakeem Sultaana*, Cuyahoga County Court of Common Pleas case number CR-13-571616-A.

However, presentence investigation reports are confidential under R.C. 2951.03(D)(1)¹ and are not subject to public record requests. *State v. Johnson*, 138 Ohio St.3d 282, 2014-Ohio-770, ¶ 10. As a result, respondent Judge Corrigan is under no duty to provide Sultaana with a copy of the presentence investigation report in case number CR-13-571616-A. *State ex rel. Whittaker v. Court of Common Pleas*, 8th Dist. Cuyahoga App. No. 78718, 2001 WL 175648 (Feb. 15, 2001) (court denied relator’s petition for writ of mandamus because respondent judge has no duty to provide relator with copy of presentence investigation report that is exempt from disclosure); *State ex rel. Sharpless v. Gierke*, 137 Ohio App.3d 821 (11th Dist. 2000) (court dismissed petition for writ of mandamus since relator has no legal right to obtain and review a

¹ Sultaana does not meet any of the enumerated exceptions under 2951.03(D)(1) to obtain a copy of the presentence investigation report in his underlying criminal case.

copy of his presentence investigation report after he has been sentenced in a criminal action); *State ex rel. Normand v. Wilkinson*, 10th Dist. Franklin App. No. 95APE05-563, 1995 WL 705204 (Nov. 28, 1995) (court affirmed trial court's denial of application for writ of mandamus in which relator sought access to the presentence investigation report due to the fact that presentence investigation report is not a public record and is exempt from disclosure). Consequently, Suldaana is not entitled to a remedy by way of writ of mandamus to obtain a copy of the presentence investigation report in his underlying criminal case.

Suldaana also seeks to have this Court compel respondent Judge Corrigan to provide him with a copy of the completed jury verdict form in case number CR-13-571616-A. However, a writ of mandamus cannot be used to compel a respondent to furnish records not in respondent's possession or control. *State ex rel. Hubbard v. Fuerst*, 8th Dist. Cuyahoga App. No. 94799, 2010-Ohio-2489, ¶ 2-3 (respondent does not have a duty to furnish copy of jury verdict form that is not in respondent's possession), citing *Fant v. Mengel*, 62 Ohio St.3d 197, 580 NE.2d 1085 (1991), *State ex rel. Marshall v. Fuerst*, 8th Dist. App. No. 78609, 1997 WL 72134, *1 (respondent does not have a clear legal duty to provide relator with a copy of jury verdict form not in respondent's possession).

Neither respondent Judge Corrigan nor his bailiff possess a completed jury verdict form in *State of Ohio v. Hakeen Suldaana*, Cuyahoga County Case No. CR-13-576616-A. (See affidavit of Judge Corrigan, attached to the "Notice of Judicial Action" filed contemporaneously with this Motion and identified as Exhibit A).²

Moreover, the signed jury verdict form Suldaana requests contain the names of the jurors who deliberated in his underlying criminal case who ultimately found him guilty of numerous

² Said "Notice of Judicial Action" appends respondent Judge Corrigan's affidavit signed on November 12, 2014. (Ex. A).

crimes. Because the completed jury verdict forms contain the names of jurors, these documents are not public records that must be disclosed under the Ohio Public Records Act. *State ex rel. Barb v. Cuy. Cty. Jury Commissioner*, 8th Dist. Cuyahoga App. No. 93326, 2009-Ohio-3301, at ¶ 4 (court denied complaint for writ of mandamus in which relator sought list of jurors who were summoned or served in his criminal cases because the names and addresses of jurors are not public records), citing *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146. Because completed jury verdict forms are not public records, Relator has failed to establish he has a legal right to the completed jury verdict form in his underlying criminal case.

For the foregoing reasons, Suldaana is not entitled to a remedy by way of writ of mandamus to obtain a copy of the completed jury verdict form in his underlying criminal case.

II. Conclusion

Suldaana has failed to establish that he has a clear legal right to a copy of the completed jury verdict form and a copy of the presentence investigation report in his underlying criminal case or that respondent Judge Corrigan has a clear legal duty to provide these documents. For the foregoing reasons, respondent Judge Corrigan respectfully requests that this court grant his motion to dismiss Relator's petition for writ of mandamus.

By:

/S/ JAMES E. MOSS
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 17TH day of November, 2014, by regular U.S. Mail to Hakeem Sultaana, Pro Se, Inmate # 654265, at Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, Ohio 44030.

By: /S/ JAMES E. MOSS
JAMES E. MOSS (0061958)
Assistant Prosecuting Attorney