ORIGINAL

No. 16-0605

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR FRANKLIN COUNTY, OHIO
No. 15-AP-863

JEROME ROYSTER

Relator-Appellant

vs.

THE OHIO ADULT PAROLE AUTHORITY et. al,.

Defendant-Appellee

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT JAMES JEROME ROYSTER

RECEIVED
APR 20 2016
CLERK OF COURT
SUPREME COURT OF OHIO

In Pro-se
JEROME ROYSTER
Chillicothe Correctional Institution
15802 State Route 104 North
Post Office Box 5500
Chillicothe, Ohio 45601

Counsel for Defendant-Appellant
MIKE DEWINE
ATTORNEY GENERAL

THOAMS C. MILLER
Assistant Attorney General
150 East Gay Street
Columbus, Ohio 43215
(614) 664-723

FILED
APR 20 2016
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

Page

EXPLANTION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION 1

STATEMENT OF THE CASE AND FACTS 3

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW 4

Proposition of Law: ***There are mandatory requirements for Ohio Revised Code Section 2969.25, but this Court has always ruled that the requirements only subjects the filer to dismissal of his action.***

CONCLUSION 4

CERTIFICATE OF SERVICE 15

Appx. Page

APPENDIX

Opinion of the Franklin County Court of Appeals (dated March 14, 2016) 1

Magistrates Decision Court of Franklin County, Ohio (dated November 20th, 2015) 2–4

Journal Entry Tenth Appellate District (dated December 9th, 2015) 5

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This issue that arises in several cases involved in Inmate filed cases that automatically trigger the requirements of Ohio Revised Code § 2969.25, where the Court deems it necessary to dismiss the Inmates Claims because he has not adhered to the above named Revised Code Section (2969.25), Appellant believes that the Courts are in error when doings so.

The Supreme Court of Ohio has held that "'[t]he requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal.'" Id. at ¶5, quoting *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003 Ohio 2262, 788 N.E.2d 634.

The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal. *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285, 286, 1997 Ohio 117, 685 N.E.2d 1242. See, also, *State ex rel. Jefferson v. Ohio Adult Parole Auth.* (1999), 86 Ohio St. 3d 304, 1999 Ohio 163, 714 N.E.2d 926.

The objectionable phrasing is that This Court has stated repeatedly that failure to comply with them subjects an inmate's action to dismissal.

But this Court has never stated that is mandatory that the Lower Courts must dismiss a Complaint.

SEC. 2969.24. (A) IF AN INMATE FILES A CIVIL ACTION OR APPEAL AGAINST A GOVERNMENT ENTITY OR EMPLOYEE, THE COURT IN WHICH THE ACTION OR APPEAL IS FILED, ON ITS OWN MOTION OR ON THE MOTION OF A PARTY, MAY DISMISS THE CIVIL ACTION OR APPEAL AT ANY STAGE IN THE PROCEEDINGS IF THE COURT FINDS ANY OF THE FOLLOWING:

(1) THE ALLEGATION OF INDIGENCY IN A POVERTY AFFIDAVIT FILED BY THE INMATE IS FALSE.
(2) THE CLAIM THAT IS THE BASIS OF THE CIVIL ACTION OR THE ISSUES OF LAW THAT

ARE THE BASIS OF THE APPEAL ARE FRIVOLOUS OR MALICIOUS.

(3) ***THE INMATE FILED AN AFFIDAVIT REQUIRED BY SECTION 2969.25 OR 2969.26 OF THE REVISED CODE THAT WAS MATERIALLY FALSE.***

The Lower Court in this Case specifically did not Rule that Appellant's Affidavit was materially false, but instead simply stated that appellant failed to meet the requirements of the statue.

The error on the part of appellant could have been by inadvertence or simply not being legally savvy to the requirements of the issues involved, ***which would allow for a different interpretation***.

The Statue specifically states that the Court must find that the relator's affidavit was materially false.

Clearly when reading the Decision of the magistrate and The Agreement of the Trial Court with the Magistrates Decision, that decision is not statutorily sufficient.

The Court is interpreting the Statue in it's own version of what it thinks the requirements are to be, but the reality is that the Statue states differently than Lower Courts interpretation.

This gives Appellant leeway as to the determination of the Decision to have his Complaint dismissed, and he believes that this Court may rectify that error because the dismissal is and never was mandatory, or intended to be mandatory.

In sum where the dismissal of an Action for alleged violation of Ohio Revised Code 2969.25, are erroneously dismissed this Court may instruct that the lower court reopen the relator's action and let it proceed to it's natural conclusion.

This is what set apart Mandamus Actions from other Civil Actions in that they require the Court to allow the litigants to conclude the actions by way of a Jury Decision not a Judge Decision.

This Court ***may grant jurisdiction*** to correct the erroneous decision of the Appellate Court.

STATEMENT OF THE CASE AND FACTS:

Relator, Jerome Royster, an inmate at the Chillicothe Correctional Institution, has filed an original action requesting that this court issue a writ of mandamus ordering respondent, Ohio Adult Parole Authority, to provide him and "similarly situated inmates, a 'meaningful consideration for parole.'"

Pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals, this court referred the matter to a magistrate. On October 16, 2015, respondent filed a motion to dismiss, arguing that relator had failed to comply with the requirements of R.C. 2969.25(A) by failing to disclose each civil action he had filed in the last five years. On November 3, 2015, relator filed a memorandum in opposition to respondent's motion to dismiss arguing that R.C. 2969.25 "is inapplicable to mandamus actions." Respondent filed a reply to relator's memorandum contra.

On November 20, 2015, the magistrate issued the appended decision, including findings of facts and conclusions of law recommending that this court grant respondent's motion to dismiss on the basis that relator had failed to comply with the mandatory requirements of R.C. 2969.25(A) by not listing in his affidavit two federal cases he had filed in the past five years. ***No objections have been filed to that decision.***

Finding no error of law or other defect on the face of the magistrate's decision, this court adopts the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's recommendation, we grant respondent's motion to dismiss.

The Motion to dismiss was granted; action dismissed.

In support of the proposition on these issues, the appellant presents the following argument.

AGRUMENT IN SUPPORT OF PROPOSITION OF LAW

***Proposition of Law:* There are mandatory requirements for Ohio Revised Code Section 2969.25, but this Court has always ruled that the requirements only subjects the filer to dismissal of his action.**

The Courts rulings in previous cases that a Complaint was dismissed for not adhering to the requirements pursuant to Ohio Revised Code 2969.25, have been enforced in some instances and not in others.

This simply means that the Complaints are susceptible to dismissal, and the Courts have the discretion to dismiss or allow the proceeding to go forward.

Susceptibility is defines as the act of subjecting someone to something, likely or liable to be influenced by a particular thing this does not automatically equate with a solution of complete denial of access to the Courts.

An opportunity or ability to enter, approach, pass to and from, or communicate with...(Access to the Courts).

The First Amendment to The United States Constitution is the constitutional amendment ratified with the Bill Of Rights in 1791, guaranteeing the freedom of speech, religion, press, assembly and petition.

This Amendment allows all of its citizens the opportunity to file in the Courts for redress, and Statues should never usurp the Constitution and its mandates.

In ***Church v. Ohio Dept. of Rehab. & Corr.* (June 15, 1999), Franklin App. No. 98AP-1222, 1999 Ohio App. LEXIS 2677**, this court found that the language of R.C. 2969.25(A) indicates that an inmate must submit an affidavit only when he has filed prior civil actions. Thus, we concluded that, if there are no actions subject to the disclosure requirement in R.C. 2969.25(A), no affidavit need be

filed. However, we specified that a written statement should be filed affirming that no prior actions subject to disclosure exist. In addition, we noted the inmate in *Church* had filed a motion to amend his complaint to add an R.C. 2969.25(A) affidavit, but the motion was denied by the trial court. We indicated that we did not believe R.C. 2969.25(A) precluded a court from granting a motion to amend or for leave in order to file the requisite affidavits, and that the trial court's denial of the inmate's motion to amend was erroneous. See, also, *State ex rel. Pohlable v. Dept. of Rehab. & Corr.*, Franklin App. No. 04AP-720, 2005 Ohio 3153, P18 (granting relator leave to amend his complaint to meet or attempt to meet the inmate filing requirements set forth under R.C. 2969.25).

Further, this court has held that a trial court should accept an inmate's belated affidavit, even without a motion to amend, before dismissing the action for failure to comply with R.C. 2969.25(A). In *Larkins v. Ohio Dept. of Rehab. & Corr.* (2000), 138 Ohio App.3d 733, 742 N.E.2d 219, we stated that inmates should be granted some leeway as to compliance with R.C. 2969.25(A), and the trial court in that case should have accepted the inmates' affidavits appended to their memorandum contra the appellee's motion to dismiss. But, see, *Richards v. Tate* (Jan. 29, 2002), Belmont App. No. 01-BA-51, 2002 Ohio 436 (the failure to file affidavit of past civil actions is not cured by a later submission); *State ex rel. Ahmed v. Marple*, Belmont App. No. 01 BA 23, 2002 Ohio 6898, at P3 (late submission of affidavit, filed after respondent's motion to dismiss, is non-compliant with R.C. 2969.25[A]).

At least one other appellate court has agreed with our above conclusions. In *Snitzky v. Wilson*, Trumbull App. No. 2003-T-0095, 2004 Ohio 7229, at P17-38, the Eleventh District Court of Appeals found the trial court's failure to grant leave to an inmate to amend his writ of habeas corpus with an R.C. 2969.25(A) affidavit was an abuse of discretion, where there was no evidence that the inmate's failure to initially comply with the statute was done in bad faith, resulted in undue delay, or caused undue prejudice. The court in *Snitzky* also distinguished the Ohio Supreme Court's decisions in *Fugua*

v. Williams, 100 Ohio St.3d 211, 2003 Ohio 5533, 797 N.E.2d 982, and *Hawkins v. S. Ohio Correctional Facility*, 102 Ohio St. 3d 299, 2004 Ohio 2893, 809 N.E.2d 1145. The court pointed out that neither of those cases specifically held that an inmate is barred from amending his original petition to conform to the statutory mandates of R.C. 2969.25(A).

Relator had attempted to respond to the Respondent's Motion for Dismissal, with a request to the Court to Allow him to Amend his Complaint with the additional information. This was attempted by relator, by asking the Court for an Extension of Time because the Librarian at the Chillicothe Correctional Institution had erased the Opposition Motion and the Request for Leave of the Court to Amend.

These documents are a part of the Record and The Court of Appeals refused relators request for that Extension of Time.

The Librarian systematically erases documents at the Chillicothe Correctional Institution, on her own whims, she simply reads the documents as they are posted, then will look up what a person is incarcerated for and deny that person any assistance from her staff of inmate workers or any assistance from any other inmate, by not allowing those individuals the use of the Law Library Computer System or the use of the Law Library Typewriters.

These are the only mechanism that are available to all of the inmates housed at this facility, other than the purchasing of individual typewriters for their own personal use.

Appellant was denied the opportunity to address the issues before him by the Librarian at the Chillicothe Correctional Institution, and with that was denied access to the Courts to pursue a meaningful avenue to correct the deficiencies.

Where inmates attempt to represent themselves in important litigation, they should be granted some leeway as to compliance with strict pleading requirements. More specifically, a trial court should accept an inmate's belated affidavit, even without a motion to amend, before dismissing an action for failure to comply with R.C. § 2969.25(A).

More specifically, we have held that a trial court should accept an inmate's belated affidavit, even without a motion to **amend,** before dismissing the action for failure to comply with **R.C. 2969.25**(A). Id.; *Hill v. Ohio Adult Parole Auth.*, Franklin App. No. 05AP-1086, 2006 Ohio 1299.

The court in *Snitzky* also distinguished the Ohio Supreme Court's decisions in *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003 Ohio 5533, 797 N.E.2d 982, and *Hawkins v. S. Ohio Correctional Facility*, 102 Ohio St. 3d 299, 2004 Ohio 2893, 809 N.E.2d 1145. The court pointed out that neither of those cases specifically held that an inmate is barred from amending his original petition to conform to the statutory mandates of R.C. 2969.25(A).

Appellant contens that R.C. 2969.25 is inapplicable to mandamus actions. *State ex rel. Wright v. Ohio Adult Parole Auth.* (1996), 75 Ohio St. 3d 82, 85, 661 N.E.2d 728, 731, quoting R.C. 2731.09 ("Issues of fact raised by the pleadings in mandamus actions 'must be tried, and further proceedings had, in the same manner as in civil actions.' "); cf. ***Martin v. United States (C.A.7, 1996), 96 F.3d 853, 854 (question of whether mandamus action brought by federal prison inmate constitutes a "civil action" for purposes of federal Prison Litigation Reform Act depends on the circumstances).***

When as is normally the case in the federal courts mandamus is being sought against the judge presiding in the petitioner's case, it is realistically a form of interlocutory appeal, and whether an interlocutory appeal is within the scope of the new Act should turn on whether the litigation in which it is being filed is within that scope. It is if it is civil litigation, and the petition for mandamus filed in such a litigation must therefore comply with the Act. In re Nagy, 89 F.3d 115, 116-17 (2d Cir. 1996);

Green v. Nottingham, 90 F.3d 415, 417-18 (10th Cir. 1996). It is not if it is criminal litigation; in such a case the petition for mandamus need not comply. In re Nagy, supra, 89 F.3d at 117.

A petition for mandamus in a criminal proceeding is not a form of prisoner litigation. The defendant filing the writ might not even be a prisoner; he might be out on bail. It is not a "civil action," the operative language of the new 28 U.S.C. § 1915(b)(1). It is a procedural step in the criminal litigation, like an interlocutory or final appeal or a civil contempt proceeding against a witness. The section we just quoted does speak of "a civil action or . . . an appeal," but in context it is apparent that the word "appeal" means the appeal in a civil action. A different conclusion would create the anomaly that a prisoner who had brought three or more groundless civil suits while incarcerated could not seek mandamus in a criminal action against him without prepaying the docket fee, 28 U.S.C. § 1915(g)--not something that Congress is likely to have intended in seeking to lessen the flow of groundless prisoner civil rights litigation. Cf. *Green v. Nottingham, supra*, 90 F.3d at 418.

The clear import of the Prison Litigation Reform Act, as reflected in its title, is to curtail meritless prisoner *litigation*. *See* H.R. Rep. No. 104-378, 104th Cong., 1st Sess. 166 (the prison litigation reforms are intended to "discourage frivolous and abusive prison lawsuits"). A mandamus proceeding under section 1651, although characterized as an original proceeding, is not an independent grant of jurisdiction, but an aid of appellate jurisdiction. 16 Charles A. Wright et al., *Federal Practice and Procedure*, § 3932 (1977).

Guided by *Landgraf*, we examine first whether Congress has expressly prescribed the proper reach of § 1915(g). Section 1915(g) provides:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

The issue here Is that the purpose that was intended was to forbid litigation that was interpreted as being on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.

The intention of the Legislature was never to punish the pro-se litigant with such stringent results as dismissal of the entire complaint.

Where Appellant does t contend that R.C. 2969.25 is inapplicable to mandamus actions. *State ex rel. Wright v. Ohio Adult Parole Auth.* (1996), 75 Ohio St. 3d 82, 85, 661 N.E.2d 728, 731, quoting R.C. 2731.09 ("Issues of fact raised by the pleadings in mandamus actions 'must be tried, and further proceedings had, in the same manner as in civil actions.' "); cf. *Martin v. United States* (C.A.7, 1996), 96 F.3d 853, 854, this Court should take judicial Notice and liberally construe these pleadings as to the unintentional error made by relator.

The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal. State ex rel. Alford v. Winters (1997), 80 Ohio St.3d 285, 286, 1997 Ohio 117, 685 N.E.2d 1242. See, also, State ex rel. Jefferson v. Ohio Adult Parole Auth. (1999), 86 Ohio St. 3d 304, 1999 Ohio 163, 714 N.E.2d 926.

Relator/Appellant is still perplexed by the statement consistently made by the Court which says failure to comply with them ***subjects an inmate's action to dismissal.***

There is no language stated by the legislature which allows the dismissal of a complaint for non-compliance in mandatory terms.

With the appellant in this matter being functionally and legally illiterate,coupled with the Chillicothe Correctional Institutions stringent policy of No Inmates allowed to assist another inmate in the preparation of his legal work, severely hampers not only Mr. Royster but a plethora of others to access to the Courts.

U.S. Const. amend I rights, like many other rights, are circumscribed in the prison setting. There is a considerable degree of deference to the prison authorities, while still retaining ultimate judicial authority to evaluate the constitutional reasonableness of the regulation. The role of the judiciary requires weighing the interests of the prison as an institution with the constitutional rights retained by the inmates.

First Amendment rights, like many other rights, are circumscribed in the prison setting. In *Turner v. Safley*, 482 U.S. 78, 89, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987), for example, the Supreme Court held that "a prison regulation [that] impinges on inmates' constitutional rights . . . is valid if it is reasonably related to legitimate penological interests." Similarly, *Pell v. Procunier*, 417 U.S. 817, 822, 41 L. Ed. 2d 495, 94 S. Ct. 2800 (1974), holds that "a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Thus, review of such regulations offers a considerable degree of deference to the prison authorities, while still retaining ultimate judicial authority to evaluate the constitutional reasonableness of the regulation. *See Turner*, 482 U.S. at 89-91 (rejecting strict scrutiny and applying a four-factor "reasonableness" test to prison regulations). The role of the judiciary requires weighing the interests of the prison as an institution (in such matters as security and effective operation) with the constitutional rights retained by the inmates.

Just what are the First Amendment rights retained by prisoners? Plaintiffs here allege a First Amendment retaliation claim. Specifically, they each claim to have been punished for exercising their

constitutionally protected right to access the courts, partially grounded in the First Amendment's protection of the right to "petition the Government for a redress of grievances." U.S. CONST. amend. I.

It is well established that prisoners have a constitutional right of access to the courts. *See, e.g.,* *Lewis v. Casey*, 518 U.S. 343, 135 L. Ed. 2d 606, 116 S. Ct. 2174 (1996); *Bounds v. Smith*, 430 U.S. 817, 821-24, 52 L. Ed. 2d 72, 97 S. Ct. 1491 (1977) (listing case law supporting the right); *Wolff v. McDonnell*, 418 U.S. 539, 577-80, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1977) (extending *Johnson*, *infra*, to cover prisoner assistance in civil rights actions); *Johnson v. Avery*, 393 U.S. 483, 488-90, 21 L. Ed. 2d 718, 89 S. Ct. 747 (1969) (striking down prison prohibition against inmates aiding one another with applications for habeas corpus); *Ex parte Hull*, 312 U.S. 546, 549, 85 L. Ed. 1034, 61 S. Ct. 640 (1941) (striking a prison regulation that essentially screened all prisoner habeas applications); *Berryman v. Rieger*, 150 F.3d 561, 567 (6th Cir. 1998) ("It has long been recognized that the lawful resort to the courts is part of the First Amendment right to petition the Government for a redress of grievances."); *John L. v. Adams*, 969 F.2d 228, 231-32 (6th Cir. 1992) (listing sources for the right, including the First Amendment).

This is not a generalized "right to litigate" but a carefully-bounded right, as Justice Scalia makes clear in *Lewis v. Casey*:

> *Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.

Lewis, 518 U.S. at 355. Thus, a prisoner's right to access the courts extends to direct appeals, habeas corpus applications, and civil rights claims only. The importance of this right to incarcerated individuals is evident and can hardly be overstated:

> The right to file for legal redress in the courts is as valuable to a prisoner as to any other citizen. Indeed, for the prisoner it is more valuable. Inasmuch as one convicted of a serious crime and imprisoned usually is divested of the franchise, the right to file a court action stands . . . as his most "fundamental political right, because preservative of all rights."

Hudson v. McMillian, 503 U.S. 1, 15, 117 L. Ed. 2d 156, 112 S. Ct. 995 (1992) (Blackmun, J., concurring in the judgment).

That inmates have a well-established constitutional right to access the courts, based in part on the First Amendment, is clear.

As described above, *Lewis v. Casey* reaffirmed the right of prisoners to access the courts, but it also tightened the standing requirements for inmates claiming a denial of the right. The Court explained that the requirement that an inmate show "actual injury" derives from the constitutional principle of standing. *Lewis*, 518 U.S. at 349. If a claimant does not have standing, he is barred from bringing suit and the federal court is without jurisdiction to hear the claim. *See Allen v. Wright*, 468 U.S. 737, 750-52, 82 L. Ed. 2d 556, 104 S. Ct. 3315 (1984). In the usual claim alleging denial of access to the courts, an inmate claims that the lack of legal assistance made it impossible for him to take some meritorious legal action. *Lewis* at 349; *Walker v. Mintzes*, 771 F.2d 920, 932 (6th Cir. 1985). In a retaliation claim such as this, however, the harm suffered is the adverse consequences which flow from the inmate's constitutionally protected action. Instead of being *denied* access to the courts, the prisoner is penalized for actually exercising that right. *Cf. Hines v. Gomez*, 108 F.3d 265, 269 (9th Cir. 1997) ("The injury asserted is the retaliatory accusation's chilling effect on Hines' First Amendment rights . . . . We hold that Hines' failure to demonstrate a more substantial injury does not nullify his retaliation claim."), *cert. denied*, U.S. , 118 S. Ct. 2339, 141 L. Ed. 2d 711 (1998); *Dixon v. Brown*, 38 F.3d 379, 379 (8th Cir. 1994) ("Because the retaliatory filing of a disciplinary charge strikes at the heart of an inmate's constitutional right to seek redress of grievances, the injury to this right inheres in the retaliatory conduct itself."). As explained above, retaliation for the exercise of constitutional rights is itself a violation of the Constitution. [9] For Article III standing purposes, then, the "plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed

by the requested relief." *Allen v. Wright*, 468 U.S. at 751. As long as the injury is "distinct and palpable" rather than abstract, conjectural, or hypothetical, it is sufficient to confer standing. *Id.* The facts of this case presented in the complaint and affidavits, many of which are summarized above, indicate real rather than hypothetical injuries. If these injuries were inflicted in retaliation for constitutionally protected conduct as alleged, they are traceable to the unlawful conduct of the defendants and a damages remedy under § 1983 would offer redress.

The rationale as to appellant's referral to § 1983, actions, is because he intends to avoid these costly and prolonged avenues of redress (which is sure to come), by requesting that his rights to litigate g his claims at this level be reviewed.

Appellant has exhibited conduct (In his Complaint), on the part of The State Actors, who read his legal filings, (1) a protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two -- that is, the adverse action was motivated at least in part by the plaintiff's protected conduct. See, e.g., Bloch v. Ribar, 156 F.3d 673, 678 (6th Cir. 1998); Lewis v. ACB Bus. Servs., Inc., 135 F.3d 389, 406 (6th Cir. 1998); Penny v. United Parcel Serv., 128 F.3d 408, 417 (6th Cir. 1997); Yellow Freight Sys., Inc. v. Reich, 27 F.3d 1133, 1138 (6th Cir. 1994). This formulation describes retaliation claims in general, but it will yield variations in different contexts.

It is clear in this circuit that an inmate does not have an independent right to help other prisoners with their legal claims. *See Gibbs v. Hopkins*, 10 F.3d 373, 378 (6th Cir. 1993). Rather, a "jailhouse lawyer's" right to assist another prisoner is wholly derivative of that prisoner's right of access to the courts; prison officials may prohibit or limit jailhouse lawyering ***unless doing so interferes with an inmate's ability to present his grievances to a court.***

Lewis v. Casey makes clear that the proper inquiry is whether the individual prisoner's right to access the courts has been impaired, and not whether the law library at his facility is adequate or whether he is entitled to a particular type of legal assistance, such as a jailhouse lawyer. We do not deviate from this precedent requiring an individualized showing of impaired access and certainly do not create "a new constitutional right of representation" for uneducated prisoners, as Judge Merritt fears, see post.

As outlined above, a consistent line of Supreme Court precedent indicates that prisoners retain a right to access the courts and that prison management cannot interfere with that right.

Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6th Cir 1999) (en banc) (holding, in a prisoner retaliation case, that the injury is "the adverse consequences which flow from the inmate's constitutionally protected action"); *Dixon v. Brown*, 38 F.3d 379, 379 (8th Cir. 1994)(noting, in a prisoner case, that the injury "inheres in the retaliatory conduct itself").

Blatter, 175 F.3d 378, 386 (6th Cir. 1999) (en banc)), the law of this circuit is clear that a prisoner litigating a retaliation claim need not prove that he had an independent liberty interest in the privileges he was denied.

Conclusion:

Although this Court may perceive this Memorandum in-artfully drafted, still warrants the case be assigned to a legal professional (Attorney), for clarity of the issue so that this Court sees fit to grant jurisdiction and review this matter.

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant requests that the court accept jurisdiction in this case so that the important issue presented will be reviewed on its merits.

Respectfully submitted,

Jerome Royster

Jerome Royster #141-662
Chillicothe Correctional Institution
Post Office Box 5500
Chillicothe, Ohio 45601

Certificate of Service:

I certify that a copy of this Notice of Appeal and Memorandum In Support of Jurisdiction has been forwarded to Thomas Miller, Assistant Attorney General, 150 East Gay Street, Columbus, Ohio 43215, this 15 day of April 2016.

Jerome Royster

Jerome Royster #141-662
Chillicothe Correctional Institution
Post Office Box 5500
Chillicothe, Ohio 45601

APPENDIX

REC'D MAR 14 2016

Franklin County Ohio Court of Appeals Clerk of Courts- 2016 Mar 10 12:38 PM-15AP000863

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Jerome Royster,	:	
Relator,	:	
v.	:	No. 15AP-863
		(REGULAR CALENDAR)
Ohio Adult Parole Authority,	:	
Respondent.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on March 10, 2016, the decision of the magistrate is approved and adopted by this court as its own, respondent's motion to dismiss is granted, and relator's action is dismissed. Costs are assessed against relator.

Within three (3) days from the filing hereof, the clerk of this court is hereby ordered to serve upon all parties not in default for failure to appear, notice of this judgment and its date of entry upon the journal.

BROWN, SADLER & LUPER SCHUSTER, JJ.

/s/ Judge
Judge Susan Brown

REC'D MAR 14 2016

Franklin County Ohio Court of Appeals Clerk of Courts- 2016 Mar 10 12:07 PM-15AP000863

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Jerome Royster,	:	
Relator,	:	
v.	:	No. 15AP-863
Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on March 10, 2016

On brief: *Jerome Royster,* pro se.

On brief: *Michael DeWine,* Attorney General, and *Thomas C. Miller,* for respondent.

IN MANDAMUS

BROWN, J.

{¶ 1} Relator, Jerome Royster, an inmate at the Chillicothe Correctional Institution, has filed an original action requesting that this court issue a writ of mandamus ordering respondent, Ohio Adult Parole Authority, to provide him and "similarly situated inmates, a 'meaningful consideration for parole.' "

{¶ 2} Pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals, this court referred the matter to a magistrate. On October 16, 2015, respondent filed a motion to dismiss, arguing that relator had failed to comply with the requirements of R.C. 2969.25(A) by failing to disclose each civil action he had filed in the last five years. On November 3, 2015, relator filed a memorandum in opposition to respondent's motion

2. At the time he filed his petition, relator filed an affidavit of prior actions averring that, in the previous five years, he had not filed any civil actions nor appeals of civil actions in any state or federal court.

3. On October 16, 2015, respondent filed a motion to dismiss arguing that relator had failed to comply with R.C. 2969.25(A) because he failed to disclose cases which he had filed in the last five years. Specifically, respondent states as follows:

> This Affidavit is materially false as that term is used in R.C. § 2969.24(A)(3). In fact, Inmate Royster, using the name "James Jerome Royster" filed a prior civil action in the United State District Court for the Southern District of Ohio, Eastern Division, on December 30, 2011 in Case No. 2:11-cv-1163. www.uscourts.gov/search. In addition, on April 20, 2015, Inmate Royster, using the name "Jerome Royster," filed a Petition for a Writ of Habeas Corpus, also in the United States District Court for the Southern District of Ohio, Eastern Division in Case No. 2:15-cv-1345. *Id.* Significantly the docket cover sheet for both prior cases reveal that despite in one of the cases using a name different than the name he has filed this present action under, verify that the filers are one and the same by reference to his Inmate Number, 141-662 on the Clerk's cover sheet for each of the two prior filings. Thus, by failing to report these prior civil actions, both of which have been filed within the past five (5) years of the filing of his instant Petition for a Writ of Mandamus, Inmate Royster's Petition fails to comply with R.C. § 2969.25(A), and clearly violates R.C. § 2969.24(A)(3).

4. The magistrate also notes that the inmate demand statement relator filed showing the balance in his inmate account for the previous six months and shows that he currently owes a balance on federal filing fees and those fees are being automatically withdrawn from his inmate account at regular intervals.

5. On November 3, 2015, relator filed his opposition to respondent's motion to dismiss. Relator does not challenge respondent's assertion; instead, relator argues that R.C. 2969.25 is inapplicable to mandamus actions.

6. The matter is currently before the magistrate on respondent's motion to dismiss.

Conclusions of Law:

R.C. 2969.25(A) requires an inmate to file, at the time he commences a civil action against a governmental entity or employee, an affidavit listing each civil action or

Franklin County Ohio Court of Appeals Clerk of Courts- 2015 Nov 20 2:10 PM-15AP000863

appeal of a civil action that he filed in the past five years, providing specific information regarding each civil action or appeal. In the present action, relator has filed an affidavit that does not comply with the statute.

Compliance with the provisions of R.C. 2969.25 is mandatory and the failure to satisfy the statutory requirements is grounds for dismissal of the action. *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258 (1999); *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421 (1998); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285 (1997).

In the present action, relator's affidavit regarding his other civil actions is not complete and fails to meet the requirements of the statute. Because relator cannot cure this deficiency at a later date, dismissal of the complaint is warranted.

Relator did not comply with the mandatory requirements of R.C. 2969.25(A) when he failed to include two federal court cases which he has filed in the previous five years. As such, it is this magistrate's decision that this court should grant respondent's motion and dismiss relator's mandamus action.

/S/ MAGISTRATE
STEPHANIE BISCA

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

Franklin County Ohio Court of Appeals Clerk of Courts- 2015 Nov 20 2:10 PM-15AP000863

Franklin County Ohio Court of Appeals Clerk of Courts- 2015 Dec 11 2:29 PM-15AP000863

RECE
DEC 4 7

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Jerome Royster,	:	
Relator,	:	
v.	:	No. 15AP-863
The Ohio Adult Parole Authority et al.,	:	(REGULAR CALENDAR)
Respondent.	:	

JOURNAL ENTRY

Relator's December 9, 2015 motion is construed as a motion for an extension of time to file objections to the magistrate's decision filed on November 20, 2015, and said motion is denied.

/S/ JUDGE