

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Robert L. Bates, :  
Relator, :  
v. : No. 11AP-531  
Judge Charles Schneider, : (REGULAR CALENDAR)  
Respondent. :

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D E C I S I O N

Rendered on January 31, 2012

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*Robert L. Bates, pro se.*

*Ron O'Brien, Prosecuting Attorney, for respondent.*

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IN MANDAMUS  
ON OBJECTIONS TO MAGISTRATE'S DECISION

TYACK, J.

{¶1} Robert L. Bates has filed this action in mandamus, seeking a writ to compel Judge Charles Schneider of the Franklin County Court of Common Pleas to issue a revised sentencing entry. Bates was sentenced in 2003 following his conviction for murder with two different firearm specifications. He alleges that the judge who sentenced him originally did not sign the sentencing entry.

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. The magistrate reviewed the file and concluded that Bates did

not comply with R.C. 2969.25(C) when he filed his complaint. The magistrate therefore issued a magistrate's decision which includes a recommendation that we dismiss this case.

{¶3} Bates has filed objections to the magistrate's decision in which he argues that he did, in fact, comply with R.C. 2969.25(C). The magistrate's decision is now before the court for review.

{¶4} R.C. 2969.25(C) reads:

(C) If an inmate who files a civil action or appeal against a government entity or employee seeks a waiver of the prepayment of the full filing fees assessed by the court in which the action or appeal is filed, the inmate shall file with the complaint or notice of appeal an affidavit that the inmate is seeking a waiver of the prepayment of the court's full filing fees and an affidavit of indigency. The affidavit of waiver and the affidavit of indigency shall contain all of the following:

(1) A statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier;

(2) A statement that sets forth all other cash and things of value owned by the inmate at that time.

{¶5} At the time he filed this action in mandamus, Bates included in his paper work an affidavit which reads:

I, Robert L. Bates hereby state the following under oath; (1) I am indigent and only receive 19 dollars as a monthly state pay, and I cannot pay for the cost of this action. I have provided this court a six month print out for this court's review.

(2) I have filed a writ of mandamus in the Ohio Supreme Court on October 20, 2006 under case number 2006-1997. The facts alleged in the mandamus action was compelling Judge Charles Schneider to furnish a copy of transcripts. The mandamus was dismissed on December of 2006.

{¶6} The affidavit filed by Bates does not literally ask for a waiver of the prepayment of the full filing fees assessed by the court.

{¶7} To date, the Supreme Court of Ohio has construed R.C. 2969.25 very strictly against inmates who are attempting to pursue lawsuits. If the paperwork filed does not completely comply with the statute at the time the complaint is filed, the Supreme Court has affirmed dismissal of the lawsuit or appeal.

{¶8} Bates may have intended for his affidavit to request a waiver of the full filing costs, but he did not literally request the waiver.

{¶9} As a result, we overrule the objections to the magistrate's decision. We adopt the findings of fact and conclusions of law in the magistrate's decision and order this action in mandamus to be dismissed without prejudice.

*Objections overruled; case dismissed  
without prejudice.*

FRENCH, J., concurs.  
KLATT, J., concurs separately.

KLATT, J., concurring separately.

{¶10} I agree with the majority decision. I write separately to point out that relator's affidavit fails to comply with R.C. 2969.25(C) for the additional reason that it does not include a statement that sets forth all other cash and things of value owned by the inmate.

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**A P P E N D I X**

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M A G I S T R A T E ' S   D E C I S I O N

Rendered on September 20, 2011

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*Robert L. Bates, pro se.*

*Ron O'Brien, Prosecuting Attorney, for respondent.*

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IN MANDAMUS  
ON SUA SPONTE DISMISSAL

{¶11} In this original action, relator, Robert L. Bates, an inmate of the Ross Correctional Institution ("RCI") requests that a writ of mandamus issue against respondent The Honorable Charles Schneider, a judge of the Franklin County Court of Common Pleas.

Findings of Fact:

{¶12} 1. On June 16, 2011, relator, an RCI inmate, filed this original action.

{¶13} 2. With his complaint, relator filed his affidavit of indigency executed May 22, 2011. Relator has not deposited with the clerk of this court the sum required as security for the payment of costs pursuant to Loc.R. 12(B).

{¶14} 3. With his complaint, relator filed a document captioned "Certificate" that is dated June 14, 2011 and signed by an "authorized officer" of RCI. This document has attachments, one of which is captioned "Inmate Demand Statement." These documents purport to satisfy R.C. 2969.25(C)(1)'s requirement that the inmate file a statement that sets forth the balance of his inmate account for each of the preceding six months, as certified by the institutional cashier.

{¶15} 4. Relator did not file with his complaint, nor has he done so to date, the affidavit required to be filed by R.C. 2969.25(C).

{¶16} 5. It appears that relator has failed to obtain service of process on the respondent.

Conclusions of Law:

{¶17} It is the magistrate's decision that this court sua sponte dismiss this action on grounds that relator has failed to comply with the mandatory filing requirement of R.C. 2969.25(C).

{¶18} R.C. 2969.25 states in part:

(A) At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate

has filed in the previous five years in any state or federal court. \* \* \*

\* \* \*

(C) If an inmate who files a civil action or appeal against a government entity or employee seeks a waiver of the prepayment of the full filing fees assessed by the court in which the action or appeal is filed, the inmate shall file with the complaint or notice of appeal an affidavit that the inmate is seeking a waiver of the prepayment of the court's full filing fees and an affidavit of indigency. The affidavit of waiver and the affidavit of indigency shall contain all of the following:

(1) A statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier;

(2) A statement that sets forth all other cash and things of value owned by the inmate at that time.

{¶19} In *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, an inmate, Carlos J. Fuqua, filed in the Allen County Court of Appeals a petition for a writ of habeas corpus. He requested leave to proceed in forma pauperis but he did not file the affidavit required by R.C. 2969.25(A) describing each civil action or appeal of a civil action that he had filed in the previous five years in any state or federal court.

{¶20} Fuqua's prison warden, Jesse J. Williams, moved to dismiss the petition.

{¶21} Fuqua requested leave in the court of appeals to amend his petition with the affidavit required by R.C. 2969.25(A).

{¶22} The court of appeals dismissed the petition for habeas corpus and Fuqua appealed as of right to the Supreme Court of Ohio.

{¶23} The Supreme Court of Ohio, in *Fuqua* at ¶9 states:

\* \* \* Fuqua's belated attempt to file the required affidavit does not excuse his non-compliance. See R.C. 2969.25(A),

which requires that the affidavit be filed "[a]t the time that an inmate commences a civil action or appeal against a government entity or employee." (Emphasis added.)

{¶24} In *Hawkins v. S. Ohio Correctional Facility*, 102 Ohio St.3d 299, 2004-Ohio-2893, an inmate, Jomo Hawkins, petitioned the Scioto County Court of Appeals for a writ of habeas corpus. However, Hawkins' petition did not contain the R.C. 2725.04(D) commitment papers, nor the affidavit required by R.C. 2969.25(A). Later, Hawkins filed an un-notarized statement purporting to be his R.C. 2969.25(A) affidavit.

{¶25} Following dismissal of his action, Hawkins appealed as of right to the Supreme Court of Ohio. Citing *Fuqua*, the *Hawkins* court affirmed the judgment of the court of appeals.

{¶26} Clearly, based upon the above authorities, relator cannot meet the mandatory filing requirement of R.C. 2969.25(C).

{¶27} Accordingly, it is the magistrate's decision that this court sua sponte dismiss this action.

/s/Kenneth W. Macke  
KENNETH W. MACKE  
MAGISTRATE

### 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).