

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	PER CURIAM OPINION
Respondent,	:	CASE NO. 2010-A-0007
- vs -	:	
ORLANDO SHEPHERD,	:	
Relator.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Thomas L. Sartini, Ashtabula County Prosecutor, and *Rebecca K. Divoky*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Respondent).

Orlando Shepherd, PID: 292-250, Richland Correctional Institution, P.O. Box 8107, Mansfield, OH 44901 (Relator).

PER CURIAM.

{¶1} This original action is a mandamus proceeding in which relator, Orlando Shepherd, sought the issuance of a writ to compel the trial judge in an underlying case to render a final determination on a pending matter. As the factual grounds for his sole claim, relator alleged that: (1) in August 2009, he moved the trial judge to conduct a new sentencing hearing in regard to the imposition of post release control; and (2) although his motion had been pending for over four months, the judge had refused to go forward

and dispose of the matter.

{¶2} In bringing the instant action, relator did not name the trial judge or court as a party to the case. Instead, the caption of his submission before this court referred solely to the “State of Ohio” as the responding party in the proceeding. Furthermore, a review of relator’s certificate of service indicates that a copy of his petition for relief was only served upon the Ashtabula County Prosecutor, as counsel for the State of Ohio. In other words, despite the fact that relator sought an order against the trial court or judge, a copy of his submission has never been sent to the court or judge.

{¶3} In prior mandamus proceedings, this court has concluded that the proper defending party in such a case is the public official who has not performed an express act which is mandatory under the law. See, e.g., *Mallon v. State*, 11th Dist. No. 2008-T-0079, 2008-Ohio-5320, at ¶6. In the instant situation, only the trial court or judge in the underlying criminal action, not the State of Ohio, would have the legal authority to rule upon relator’s pending motion or schedule a new sentencing hearing. To this extent, relator has failed to maintain the present case against a party who could be compelled to perform the act in question.

{¶4} In conjunction with the foregoing, this court has further held that if a relator in a mandamus proceeding does not take the necessary steps to serve his petition upon the proper defending party, the matter cannot go forward because we would not have personal jurisdiction over that party under such circumstances. *Sardich v. State*, 11th Dist. No. 2002-T-0003, 2002-Ohio-2667, at ¶7. Accordingly, even if relator had listed the trial court or judge in the caption of the instant petition, a writ of mandamus could never be issued against the court or judge because our jurisdiction over that party has

not been properly invoked through proper service on that trial court or judge.

{¶5} Finally, as the primary basis for its motion to dismiss this case, respondent asserts that the merits of relator's sole claim cannot be addressed because, in filing this matter, he failed to comply with the requirement of R.C. 2731.04. That statute provides that a mandamus petition must be brought "in the name of the state on the relation of the person applying ***." In construing this statute, this court has indicated that the basic requirement of maintaining the case "in the name of the state" is mandatory, and that the failure to do so is a sufficient reason to dismiss the entire action. *Sardich*, 2002-Ohio-2667, at ¶4.

{¶6} In the present case, a review of relator's petition readily shows that he did not bring his mandamus action in the name of the state; rather, he brought the action in his own name. Therefore, relator has failed to satisfy any of the general requirements for maintaining an action in mandamus.

{¶7} Since relator's filing is procedurally defective and the substance of relator's sole claim is not properly before this court for disposition, respondent's motion to dismiss is granted. It is the order of this court that relator's entire mandamus petition is hereby dismissed.

DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., COLLEEN MARY O'TOOLE, J., concur.