[Cite as *Oko v. Mohr*, 2012-Ohio-1450.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

MICHAEL OKO,	:	**PER CURIAM OPINION**
Relator,	:	**CASE NO. 2011-A-0045**
- vs -	:	
GARY C. MOHR (DIRECTOR), et al.,	:	
Respondents.	:	

Original Action for Writ of Mandamus and Prohibition.

Judgment: Writs denied.

Michael Oko, pro se, PID# 500-505, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030 (Relator).

Mike DeWine, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215, and *Thomas C. Miller*, Assistant Attorney General, Corrections Litigation Unit, 150 East Gay St., 16th Floor, Columbus, OH 43215 (For Respondents).

PER CURIAM

{¶1} The instant proceeding in mandamus and prohibition is presently before this court for final consideration of the parties' competing Motions for Summary Judgment. In Respondent, Gary C. Mohr's, Motion for Summary Judgment, he asserts that no clear legal duty is owed to relator, Michael Oko. For the following reasons, we grant the respondent's Motion for Summary Judgment, deny relator's Motion for Summary Judgment, and conclude that relator is not entitled to a writ of mandamus or a writ of prohibition.

{¶2} Relator is currently a prisoner at Lake Erie Correctional Institution serving a term of incarceration of eight years. In his Petition for Writ of Mandamus and Prohibition, he requests that respondents, Gary Mohr, the director of the Ohio Department of Rehabilitation and Correction (ODRC), and Richard Gansheimer, Warden of the Lake Erie Correctional Institution, be compelled to recall a prison number issued to relator.

{¶3} On May 18, 2004, in Cuyahoga County Court of Common Pleas Case Number CR-04-447702, relator entered a guilty plea to one count of drug trafficking and the State nolled the four remaining counts. Relator was sentenced to a term of three years imprisonment. According to relator, he was subsequently transported to the Lorain County Correctional Institution, where he was assigned a prison identification number, No. 464-735. He was then transferred to Lake Erie Correctional Institution to serve his sentence.

{¶4} Relator subsequently filed a motion to withdraw his guilty plea in the trial court, which was denied. He also appealed his conviction and the appellate court held that relator's plea was not knowingly, intelligently, and voluntarily made. The court vacated relator's plea and remanded the matter for further proceedings. *State v. Oko*, 8th Dist. No. 85049, 2005-Ohio-3705, ¶ 17.

{¶5} Upon remand, the matter proceeded to a jury trial. On December 20, 2005, relator was found guilty of all five counts in the original Indictment, which included three counts of drug trafficking, one count of possession of drugs, and one count of possession of criminal tools. On December 21, 2005, he was sentenced to a term of

eight years of imprisonment. This conviction was upheld in *State v. Oko*, 8th Dist. No. 87539, 2007-Ohio-538.

{¶6} According to relator's Petition, subsequent to being sentenced, he was returned to the Lake Erie Correctional Institution and given his prior prison identification number, No. 464-735. Approximately six weeks later, relator was given a new prison identification number, No. 500-505.

{¶7} Relator asserts in his Petition that being given a second, separate prison number "convey[s] that relator was charged and convicted under new charges," although he was convicted of the same crime and under the original Indictment upon remand. He asserts that this makes him appear to be a "repeat offender." He requests that this court require respondents to terminate No. 500-505 and reissue his original prison identification number, No. 464-735.

{¶8} Subsequent to the filing of the Petition for Writ of Mandamus and Prohibition and the Answer, the parties and this court attempted to settle this matter through telephonic conferences held on November 10 and 22, 2011. The parties were unable to settle and on December 29, 2011, this court ordered that both parties file competing motions for summary judgment.

{¶9} On January 18, 2012, respondent filed a Motion for Summary Judgment. The Motion asserts that relator has failed to assert the necessary elements to prevail on a claim for a writ of mandamus, as he cannot cite to any rule or law which provides him a clear legal right to the relief requested. It also asserts that relator cannot prevail on his request for a writ of prohibition, since respondent is not a judicial officer and did not

act with any judicial authority or power when assigning relator a prison identification number.

{¶10} On February 13, 2012, relator filed a Motion for Summary Judgment. In this Motion, relator asserts that by receiving multiple prison identification numbers for the same crime, he is designated as a "re-offender." He asserts that he has a "clear legal right to a single prison number as opposed to multiple prison number[s] for a single criminal indictment." He argues that he has a clear legal right to "accurate classification" under ODRC "Rule" 52 RCP-01, "Reception Admission Procedure," and under R.C. 5120.01. He also asserts that he does not possess a plain and adequate remedy at law.

{¶11} Mandamus is a writ issued to a public officer to perform an act "which the law specially enjoins as a duty resulting from an office." R.C. 2731.01. "For a writ of mandamus to issue, the relator must establish a clear legal right to the relief prayed for; the respondent must have a clear legal duty to perform the act; and the relator must have no plain and adequate remedy in the ordinary course of the law." *State ex rel. Widmer v. Mohney*, 11th Dist. No. 2007-G-2776, 2008-Ohio-1028, ¶ 31, citing *State ex rel. National Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79, 80, 526 N.E.2d 786 (1988).

{¶12} We initially note that, although relator asserts that he was given two separate numbers even though he was convicted of the same crimes, he was actually convicted of additional crimes upon remand, which he did not plead to in his first conviction. Therefore, the assertion that there is no justification for giving relator a second prison identification number is without merit.

{¶13} Regarding the existence of a legal right and duty in this matter, relator asserts that both are established by two separate statutes or regulations. First, he argues that respondents owe him a legal duty to give him only one prison number under R.C. 5120.01.

{¶14} R.C. 5120.01 provides: "The director of rehabilitation and correction is the executive head of the department of rehabilitation and correction. All duties conferred on the various divisions and institutions of the department by law or by order of the director shall be performed under the rules and regulations that the director prescribes and shall be under the director's control. Inmates committed to the department of rehabilitation and correction shall be under the legal custody of the director or the director's designee * * *." Although this section gives the director of the ODRC the power to make rules regulating the prisons and places the inmates in his custody, it does not make any statement regarding his or the prison warden's duty to give a prison inmate a certain identification number, nor does any other section of the Ohio Revised Code. At most, it may establish a duty of the director of the ODRC to enforce any existing regulations requiring the relief requested by relator, if such a rule existed.

{¶15} A review of the Ohio Department of Rehabilitation and Correction Administrative Rules also reveals no duty on behalf of the respondent, or legal right for relator, to maintain the same prison identification number for an inmate who has had his case remanded and who was either convicted again or resentenced. These rules make no reference to the requirement that the same prison identification number must be retained in such situations or that an inmate can receive only one number per indictment, as relator argues.

{¶16} Relator also cites to the Department's "Reception Admission Procedure" as an Administrative Rule. It is not such a rule but instead is a policy issued by the ODRC pursuant to R.C. 5120.01, and was given policy number 52-RCP-01. This policy establishes standard procedures regulating admission to ODRC reception centers. A review of the rule establishes only that upon processing a committed inmate, he must be given an "institutional number." Again, there is no requirement that an inmate never be given a second number.

{¶17} Finally, a review of the case law also reveals no legal right for a prisoner to maintain the same prison number. The law also does not show that the failure to do so would cause any harm to the prisoner or would have the legal effect of labeling relator a "re-offender."

{¶18} As a separate matter, relator asserts, in his Motion for Summary Judgment, that as to his prison release date, the ODRC has provided the improper release date and requests that the ODRC be required to fix this alleged error. Initially, we note that relator raised this error for the first time in his Motion and did not request relief as to this issue in his Petition. Moreover, this argument is meritless. Relator takes issue with the fact that his release date is set for August 26, 2012.[1] He believes his release date should be May 4, 2012, which would be exactly eight years from his original imprisonment on the first sentence which started May 18, 2004, with initial credit for 14 days served. We emphasize that relator was resentenced on December 21, 2005. At that time, after sentencing relator to a term of eight years of imprisonment, the court took into account the time served prior to remand and gave relator credit for 480

1. According to the materials provided by relator, the ODRC actually has the expiration of relator's term, or his release date, set for August 5, 2012, not August 26, 2012.

days served. These 480 days do not give relator full credit for the time that elapsed from May 18, 2004 to December 21, 2005, which would be a period of 582 days. There is no evidence before this court as to how the court calculated such a time period, nor is the issue of the trial court's calculation before us in this matter. It appears that relator's issue related to the alleged problem with the time calculation is with the trial court, not the ODRC. Thus, even if there were an error, we cannot grant a writ of mandamus against respondent as to this issue.

{¶19} Relator also asserts that he is entitled to a writ of prohibition, prohibiting the respondent from "falsely label[ing] relator as a repeated offender based upon two prison numbers on one indictment."

{¶20} In order to obtain a writ of prohibition, relator must establish "(1) that the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power, (2) that the exercise of that power is unauthorized by law, and (3) that denying a writ will result in injury for which no other adequate remedy exists in the ordinary course of law." *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 234-235, 638 N.E.2d 541, 543 (1994).

{¶21} Upon reviewing the factual allegations in the instant petition, this court holds that relator has failed to state a viable claim for a writ of prohibition because the relief he seeks cannot be afforded through such a writ. "[T]he function of a writ of prohibition is very limited; i.e., the sole purpose of such a writ is to stop an inferior court or judicial officer from engaging in any action which exceeds the general scope of its jurisdiction." *State ex rel. Feathers v. Gansheimer*, 11th Dist. No. 2006-A-0038, 2007-Ohio-2858, ¶ 2. "[A] writ of prohibition has been defined as an order in which a court of

superior authority commands a court of inferior jurisdiction to stop abusing its basic judicial power." *State ex rel. Sferra v. Girard*, 11th Dist. No. 2005-T-0125, 2006-Ohio-1876, ¶ 13.

{¶22} "[T]he proper respondent to a prohibition action is typically the court or judge who is intending to act beyond the parameters of his jurisdiction. Although it is certainly possible for other public entities or officials to be properly named as a respondent in this type of action, the decisive factor is whether the entity or official is actually performing a judicial or quasi-judicial function." *Id.* at ¶ 15.

{¶23} In the present matter, there is no indication that the respondent was acting in a judicial or quasi-judicial function. Giving a prison number to an inmate does not require any act of adjudication and is not a judicial act. In addition, even if this were considered to be a judicial act, there is no evidence that such an act was being performed outside of the respondent's jurisdiction or that it was an abuse of power.

{¶24} Pursuant to Civ.R. 56(C), summary judgment can be granted in favor of the moving party when his motion demonstrates that: "(1) there are no genuine issues of material fact remaining to be tried; (2) the moving party is entitled to judgment in his favor as a matter of law; and (3) the state of the evidentiary materials is such that, even when those materials are viewed in a manner most favorable to the opposing party, a reasonable person would still reach a conclusion which is adverse to the opposing party." *State ex rel. Thompson v. Gansheimer*, 11th Dist. No. 2006-A-0086, 2007-Ohio-3477, ¶ 16. Pursuant to the foregoing discussion, we find that this standard has been satisfied by respondent as to the elements of relator's mandamus and prohibition claims. Respondent is entitled to prevail because the undisputed facts show that he

has no legal duty to perform the act requested by relator, the relator has no legal right to the relief requested, and that respondent did not exercise judicial power such that a writ of prohibition is proper.

{¶25} Given our holding that relator is not entitled to a writ of mandamus or prohibition to compel the director of the ODRC to give relator a new prison number and recall his prior prison number, it follows that such writs will not lie to compel the warden of the prison to take such an action in accordance with ODRC prison procedure. *See State ex rel. Petty v. Portage Cty. Court of Common Pleas*, 11th Dist. No. 97-P-0041, 1997 Ohio App. LEXIS 4684, *8 (Oct. 17, 1997) (where one respondent has filed a motion for summary judgment but the motion is also applicable to the other respondent, summary judgment can be granted in favor of both parties). No separate action was alleged by relator to have been either taken or not taken by the warden, apart from the actions discussed above. Thus, the granting of summary judgment in favor of Respondent Gansheimer is also warranted. *See State ex rel. Feathers v. Hayes*, 11th Dist. No. 2006-P-0092, 2007-Ohio-3852, ¶ 26 (where no separate action was alleged to have been taken by the second respondent in the matter, dismissal of the claims against both respondents was warranted).

{¶26} Accordingly, respondent's Motion for Summary Judgment is granted. Pursuant to the foregoing analysis, summary judgment is granted in favor of both respondents. It is the order of this court that final judgment is hereby entered in favor of respondents as to relator's claims in mandamus and prohibition.

DIANE V. GRENDELL, J., CYNTHIA WESTCOTT RICE, J., THOMAS R. WRIGHT, J., concur.