

[Cite as *State ex rel. Green v. Durkin*, 2003-Ohio-6277.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE ex rel.,)	
KEVIN L. GREEN, Sr.,)	
)	CASE NO. 03 MA 169
PETITIONER,)	
)	
- VS -)	OPINION
)	AND
JUDGE JOHN M. DURKIN, JUDGE,)	JOURNAL ENTRY
MAHONING COUNTY COMMON)	
PLEAS COURT,)	
)	
RESPONDENT.)	

CHARACTER OF PROCEEDINGS: Petition for Writ of Mandamus.

JUDGMENT: Petition Dismissed.

APPEARANCES:

For Petitioner:	Kevin L. Green, Sr., Pro-se #399-990 L.E.C.I. P.O. Box 56 Lebanon, OH 45036
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For Respondent:	Paul Gains Mahoning County Prosecutor 21 W. Boardman St., 6th Floor Youngstown, OH 44503
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JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: November 17, 2003

PER CURIAM.

{¶1} Petition for Writ of Mandamus was filed on September 16, 2003 seeking an order to compel Respondent to proceed to judgment on a motion for a new trial filed by Petitioner on March 11, 2003 in Petitioner's underlying criminal case, assigned Case No. 99 CR 893C. On September 25, 2003 this Court issued an order granting Respondent time to file an answer or otherwise plead. When no responsive pleading was filed Petitioner filed on October 28, 2003 a Request to Impose Sanctions for such failure.

{¶2} For the reasons that follow, we dismiss the Petition for Writ of Mandamus.

{¶3} For a writ of mandamus to issue this Court must find that 1) petitioner has a clear legal right to relief prayer for; 2) that respondent is under a clear legal duty to perform the requested act; and, 3) that petitioner has no plain and adequate remedy in the ordinary course of law. State ex rel. Hodges v. Taft (1992), 64 Ohio St.3d 1, 591 N.E. 2d 1186.

{¶4} An examination of the appearance docket for criminal case No. 99 CR 893C discloses that subsequent to the March 11, 2003 motion for new trial, Petitioner filed a second motion for new trial on June 6, 2003. That second motion, which supplanted the first motion, was overruled on June 10, 2003. The docket further reveals that Petitioner also had a motion for relief from judgment overruled on September 16, 2003. No appeal was taken from either order. Accordingly, this petition is moot as the trial court has issued a ruling on the latest motion for new trial.

{¶5} Furthermore, pursuant to R.C. 2969.25(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 aciton that the inmate has filed in the previous five years in any state or federal court." The failure to file the mandatory affidavit is cause for dismissal. State ex

rel. Zanders v. Ohio Parole Bd. (1998), 82 Ohio St.3d 421, 1998-Ohio-218.

{¶6} Petitioner has failed to file the required affidavit listing civil actions filed in state or federal court in the preceding five years.

{¶7} For the above stated reasons Petitioner's motion to impose sanctions is denied and his Petition for Writ of Mandamus is dismissed.

{¶8} Costs of this proceeding taxed against Petitioner. Final order. Clerk to serve notice as provided by the Civil Rules.

Donofrio, Vukovich and DeGenaro, JJ., concur.