

[Cite as *Dumas v. Carfolo*, 2016-Ohio-4820.]  
STATE OF OHIO, MAHONING COUNTY

[Cite as *Dumas v. Carfolo*, 2016-Ohio-4820.]  
STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

NATHANIEL DUMAS ) CASE NO. 15 MA 0065

RELATOR )

VS. ) OPINION AND

MARK CARFOLO, ESQ., et al. )

RESPONDENTS )

CHARACTER OF PROCEEDINGS: Relator's Petition for Writ of Mandamus

**JUDGMENT:** Dismissed.

APPEARANCES:

For Relator Nathaniel Dumas: Nathaniel Dumas, Pro se, #622-439  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, Ohio 45601

Nathaniel Dumas, Pro se, #622-439  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, Ohio 45601

For Respondent Mark Carfolo:

Atty. Mark Carfolo  
23 Lisbon Street, Suite K  
Canfield, Ohio 44406

Atty. Mark Carolo  
23 Lisbon Street, Suite K  
Canfield, Ohio 44406

For Respondents Rebecca Doherty, Esq.,  
Jennifer McLaughlin, Esq., and  
Honorable James C. Evans, Retired:

Atty. Paul J. Gains  
Mahoning County Prosecutor  
Atty. Ralph M. Rivera  
Assistant Prosecuting Attorney  
21 West Boardman Street, 6<sup>th</sup> Floor  
Youngstown, Ohio 44503

Atty. Paul J. Gains  
Mahoning County Prosecutor  
Atty. Ralph M. Rivera  
Assistant Prosecuting Attorney  
21 West Boardman Street, 6<sup>th</sup> Floor  
Youngstown, Ohio 44503

**JUDGES:**

Hon. Cheryl L. Waite

Hon. Gene Donofrio

Hon. Mary DeGenaro

Dated: June 29, 2016

[Cite as *Dumas v. Carfolo*, 2016-Ohio-4820.]  
PER CURIAM.

{¶1} *Pro se* Relator Nathaniel Dumas has filed a petition for writ of mandamus against Respondents Mark Carfolo, Esq., Rebecca Doherty, Esq., Jennifer McLaughlin, Esq., and Hon. James C. Evans. Relator is an inmate at the Ross Correctional Institution in Chillicothe, Ohio, serving prison terms for felony murder and aggravated robbery. Respondents have filed answers and motions for judgment on the pleadings. For the following reasons, we dismiss the petition.

{¶2} In Relator's petition he asks us to issue orders to the Mahoning County Prosecutor's office and the Mahoning County Court of Common Pleas, and to appoint a special prosecutor, grant a motion to dismiss in a criminal case, discipline the respondents, and report crimes and ethical violations. However, due to procedural errors in the filing of the petition, we do not reach the merits of Relator's claims.

{¶3} A writ of mandamus is defined as, "a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." R.C. 2731.01. A writ of mandamus may be granted if the court finds that the relator: (1) has a clear legal right to the relief requested; (2) respondent is under a clear legal duty to perform the requested act; and (3) that relator has no plain and adequate remedy at law. *State ex rel. Rogers v. Taft*, 64 Ohio St.3d 193, 594 N.E.2d 576 (1992).

{¶4} A writ of mandamus is an extraordinary remedy issued only in cases of extreme necessity due to the absence or inadequacy of other remedies. *State ex rel. Manley v. Walsh*, 142 Ohio St.3d 384, 2014-Ohio-4563, 31 N.E.3d 608, ¶ 18. A

relator who seeks such a writ has the burden to establish a right to mandamus. *State ex rel. Fant v. Sykes*, 28 Ohio St.3d 90, 91, 502 N.E.2d 597 (1986).

{¶15} The various Respondents have filed two motions for judgment on the pleadings. A Civ.R. 12(C) motion for judgment on the pleadings is designed to review the pleadings, and only the pleadings, on matters of law. *Peterson v. Teodosio*, 34 Ohio St.2d 161, 166, 297 N.E.2d 113 (1973). Pursuant to Civ.R. 12(C), dismissal is appropriate “where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief.” *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996). It is obvious that the petition does not meet the procedural requirements for filing a petition for writ of mandamus, and we hereby sustain Respondents' motions.

{¶16} Respondents argue that Relator did not comply with R.C. 2969.25(C)(1) by failing to include the balance of his inmate account for each of the preceding six months, as certified by the institutional cashier. Relator argues that he attempted to cure this defect in a motion for leave to amend. The amendment does not contain documents complying with the statute. More importantly, failure to comply with R.C. 2969.25(C)(1) cannot be cured by amendment after the petition is filed. *State ex rel. Jackson v. Calabrese*, 143 Ohio St.3d 409, 2015-Ohio-2918, 38 N.E.3d 880, ¶ 5. Relator contends that he directed the institutional cashier to mail his inmate account separately, but that does not meet the requirement of R.C. 2969.25(C)(1), which

states that “the inmate shall file with the complaint” the inmate statement balance. Relator contends that prison policy does not allow him to have access to the statement, but as the Ohio Supreme Court has noted, Relator could have forwarded his petition and other documents to be filed with the affidavit of indigency and cashier's certification to the cashier so that the cashier could have mailed all of the pertinent documents to the clerk of the Court of Appeals. *Boles v. Knab*, 129 Ohio St.3d 222, 2011-Ohio-2859, 951 N.E.2d 389, ¶ 4. The alleged prison policy did not prevent Relator's compliance with the statutory requirement.

{¶7} Respondents further argue that Relator failed to attach to his petition an affidavit that describes each civil action or appeal of a civil action that he has filed in the previous five years, as required by R.C. 2969.25(A). We agree with Respondents that the required affidavit is not part of the petition, and it is apparent to us that there have been many such filings by Relator, as this Court has been the object of numerous such filings in the past few years. The affidavit must be filed “at the time” the relator commences the action, and “[f]ailure to file the required affidavit is cause for dismissal.” *Floyd v. Noble Cty. Common Pleas Court*, 7th Dist. No. 253, 2002-Ohio-3760, ¶ 9, citing *State ex rel. Sherrills v. Franklin Cty. Clerk of Courts*, 92 Ohio St.3d 402, 750 N.E.2d 594 (2001). Failure to file the affidavit of past civil actions is not cured by a later submission. *Richards v. Tate*, 7th Dist. No. 01BA51 (Jan. 29, 2002); *State ex rel. Harris v. Johnson*, 7th Dist. No. 00CA142 (Nov. 29, 2000).

{¶8} Strict compliance with R.C. 2969.25 is required and leeway is not granted to *pro se* inmates. *Harman v. Wellington*, 7th Dist. No. 00CA248, (Dec. 20,

2001). Failure to comply with R.C. 2969.25 is a “sufficient reason to deny the writ, deny indigency status, and assess costs against the petitioner.” *State ex rel. Myrieckes v. Gallagher*, 8th Dist. No. 93477, 2009-Ohio-3272, at ¶ 4, citing *State ex rel. Palmer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842, at ¶ 5-7. Thus, this petition is noncompliant and must be dismissed.

{¶9} For the foregoing reasons, Respondents' motions to dismiss Relator's petition for writ of mandamus are granted and the complaint is hereby dismissed.

{¶10} Costs taxed to Relator. Final order. Clerk to serve notice as provided by the Civil Rules.

Waite, J., concurs.

Donofrio, P.J., concurs.

DeGenaro, J., concurs.