

IN THE SUPREME COURT OF OHIO

STATE ex rel. CHARLES TINGLER,	:	CASE NO.2022-1590
	:	
PETITIONER,	:	
	:	ORIGINAL ACTION IN
vs.	:	MANDAMUS
	:	
ELYRIA POLICE DEPARTMENT et	:	
al.,	:	
	:	
RESPONDENT.	:	

MOTION TO DISMISS

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MOTION TO DISMISS

The Lorain County Prosecutor respectfully comes before this Court and moves the Court to dismiss Relator Charles Tingler’s complaint for writ of mandamus pursuant to Civ.R. 12(B)(6) because it fails to state a claim warranting relief. A memorandum setting forth the grounds for this motion is attached.

Respectfully submitted,

J.D. TOMLINSON (0081796)
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/s/ Leigh S. Prugh

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MEMORANDUM IN SUPPORT

I. BRIEF HISTORY AND FACTS

Relator's action against Respondent is one of approximately 69 actions that Relator has filed in this Court in the last 30 days, seeking writs of mandamus throughout the state of Ohio. Relator has named law enforcement offices, prosecutor's offices, individual prosecutors, judges, the office of Disciplinary Counsel, and more. As of the date of the filing of this motion, the number listed above will probably no longer be accurate. It is tempting to entertain the notion that a lone Ohio resident of humble means could have uncovered instances of corruption spanning the entire state, and is now single-handedly bringing them all to light. But in reality, voluminous resources are going to be spent addressing what are a series of baseless actions in this Court, including this one, which has absolutely no merit whatsoever.

Relator's complaint is well short of any meaningful statement of factual allegations. In fact, it appears the only factual allegation in Relator's complaint is that he contacted the Elyria Police Department and the office of the Respondent to report alleged crimes of Lorain County Sheriff Phil Stammitti, namely the misuse of funds from the "furtherance of justice" fund. (Complaint, first paragraph.) The remainder of the complaint consists of rambling legal premises, accompanied by long string citations. None of these statements provide any further factual basis for the relief that Relator seeks, namely that the Respondents to this action file a police report, conduct a criminal investigation, and present findings before a grand jury.

II. LAW AND ARGUMENT

A motion to dismiss a complaint on Civ.R. 12(B)(6) grounds should be granted when, when viewing all factual allegations in favor of the nonmoving party, the Relator cannot prove any set of facts warranting the relief sought. *State ex rel. Neff v. Corrigan*, 75 Ohio St. 3d 12, 14, 1996-

Ohio-231, 661 N.E.2d 170. In this case, Relator seeks to have this Court issue a writ of mandamus (Complaint, Conclusion), which is an extraordinary request for relief. It is therefore necessary to expound the circumstance under which such relief is appropriate.

The issuance of a writ of mandamus amounts to a command to the targeted respondent, to take a specified action under penalty of possible fines or other consequences in case of disobedience. R.C. 2731.13. Therefore such writs are to be issued with utmost caution. *State ex rel. Liberty Mills, Inc. v. Locker*, 22 Ohio St. 3d 102, 103, 488 N.E.2d 883 (1986). In order for Relator to be entitled to writ of mandamus, he must demonstrate that he has a clear legal right to the relief requested, that Respondent has a clear legal duty to provide it, and that Relator does not have an adequate remedy at law. *State ex rel. McQueen v. Court of Common Pleas*, 135 Ohio St. 3d 291, 2013-Ohio-65, 986 N.E.2d 925, ¶ 7.

A. There is No Clear Legal Right, Nor Any Clear Legal Duty, Associated with Respondent's Filing of a Police Report.

R.C. 309.08 sets forth the duties of a county prosecutor. Namely, the prosecutor is mandated to prosecute all cases and matters in which the State of Ohio is a party, as well as all matters within and outside the county that the prosecutor is required to prosecute. R.C. 309.08(A). This statutory provision also states that a prosecuting attorney *may* look into the commission of crimes within the county. *Id.* There is no directive or mandate, however, to do so. Nor is there any other type of mandate or directive anywhere else in R.C. Chapter 309.

The only other statutes that could come into play in this analysis are R.C. 2935.09 and 2935.10, which include a process by which a citizen can make known an assertion of facts that may lead to the filing of a criminal complaint. Specifically, these statutes provide that a private citizen may submit an affidavit charging a crime to a reviewing official, such as a prosecuting attorney, to determine if such prosecuting attorney should bring charges. R.C. 2935.09(D). R.C.

2935.10 prescribes a level of discretion to the reviewing official, namely to determine if the affidavit was not submitted in good faith, or the claim of criminal activity is not meritorious. R.C. 2935.10(A). Thus again, here lies the absence of a mandate or directive to initiate any kind of criminal charges, but rather discretion at the hands of the prosecuting attorney. But we do not even reach this portion of the statute because Relator has not made any claim in his complaint for relief that he ever filed such an affidavit. In short, Relator has not set forth any set of factual allegations whatsoever that demonstrate that he has a clear legal right to the relief he is seeking, nor that Respondent has a clear legal duty to provide such relief.

B. Relator Has Adequate Remedies at Law For the Relief That He Seeks.

Relator does have the option to submit an affidavit—i.e. a statement attested to by an official State of Ohio notary public, wherein he swears to the truthfulness of his first-hand, accurate knowledge of very serious allegations against the Lorain County Sheriff—with a reviewing official described in R.C. 2935.10. If, however, Relator is not able to craft such a document with his first-hand, accurate knowledge of such allegations, then he should not be afforded any such relief in any case. In fact, nor should anyone else who cannot bring truthful, genuine allegations against another person that may result in consequences as serious as a criminal investigation. Ohio's court system cannot allow the besmirchment of the reputation of innocent persons at the hands of a frivolous individual who has repeatedly abused a process designed to provide legitimate relief to those who are actually entitled to it.

III. CONCLUSION

For all the reasons stated in this memorandum, this Court should dismiss Relator's complaint for a writ of mandamus against Respondent.

Respectfully submitted,

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Lorain County Prosecuting Attorney

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CERTIFICATE OF SERVICE

I certify that the foregoing *Motion to Dismiss* was served via regular U.S. mail this 17th day of January, 2023, upon the following:

Charles Tingler
God's Caring Heart Homeless Shelter
208 W. Main Street
Bellevue, Ohio 44811

/s/ Leigh S. Prugh
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