

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Elfin Jones,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 09AP-352
	:	(C.P.C. No. 08CVH-08-12002)
Marc Dann, (Former) Ohio Attorney	:	
General et al.	:	(REGULAR CALENDAR)
	:	
Defendants-Appellees.	:	
	:	

D E C I S I O N

Rendered on November 12, 2009

Elfin Jones, pro se.

Richard Cordray, Attorney General, and *Emily C. Hvizdos*, for defendant Ohio Attorney General.

Phillip R. Cummings, Hamilton County Assistant Prosecuting Attorney, for defendant Joseph T. Deters.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Plaintiff-appellant, Elfin Jones, appeals from a judgment of the Franklin County Court of Common Pleas granting the motions to dismiss of defendants-appellees, Marc Dann, (former) Ohio Attorney General, and Joseph T. Deters, Hamilton County

Prosecutor. Because plaintiff failed to meet the statutory requirements under R.C. 149.43(B)(8) to compel defendants to produce the requested documents, we affirm.

I. Procedural History

{¶2} On August 20, 2008, plaintiff filed a complaint in the Franklin County Court of Common Pleas. According to the allegations of the complaint, the Hamilton County Grand Jury indicted plaintiff on an unspecified date for one count of possession of marijuana in violation of R.C. 2925.11(A), and one count of trafficking in marijuana in violation of R.C. 2925.03(A)(2).

{¶3} Plaintiff's complaint indicates that as a result of his conviction, he filed a motion for a delayed appeal in the First District Court of Appeals; the court denied the motion. According to his complaint, plaintiff attempted to appeal to the Ohio Supreme Court, but the court declined to hear his appeal. His complaint also asserts he sought habeas corpus relief in federal court; the requested writ was denied.

{¶4} In that context, plaintiff's complaint asserts defendants conspired "to conceal, and falsify legal documents pertaining to Plaintiff's case, namely Plaintiff's search warrant and **Affidavit** for **Search**, which said documents would had [sic] exonerated Jones from charges and an indictment." (Complaint, 4.) Plaintiff claims that, as a result of defendants' actions, he was prevented from fully and fairly litigating his appeals, including his Fourth Amendment claims and his request for a writ of habeas corpus. Accordingly, plaintiff's prayer for relief asked that defendant(s) be ordered "to provide and or produce a copy of Plaintiff's Serach [sic] warrant or affidavit for search in the case of State of Ohio -vs- Elfin Jones, B-0601782, (Hamilton County, Ohio[])." (Complaint, 7.)

{¶5} Plaintiff on September 8, 2008 filed a motion to compel discovery and for production of documents; former Attorney General Dann responded with a motion to stay discovery and a memorandum opposing plaintiff's motion. The trial court on September 17, 2008 granted the motion to stay and denied plaintiff's motion to compel discovery.

{¶6} Defendants each filed a motion to dismiss pursuant to Civ.R. 12(B)(6), contending plaintiff's complaint failed to state a claim on which relief could be granted because the complaint failed to allege compliance with the requirements of R.C. 149.43(B)(8). After the parties fully briefed the motion, the trial court on March 29, 2008 filed a judgment entry granting defendants' motions to dismiss. The trial court concluded plaintiff's complaint "fails to allege that the judge (presumably in Hamilton County) who imposed sentence found that the documents plaintiff seeks are necessary to support what appears to be a justiciable claim." (Judgment Entry, 2.) Accordingly, the trial court concluded "plaintiff has failed to state a viable claim in this case for records." (Judgment Entry, 2.)

II. Assignments of Error

{¶7} Plaintiff assigns the following errors:

FIRST ASSIGNMENT OF ERROR

Brady V. Mariland, the Structural Discovery error occurs when the government withholds material, favorable evidence and there is a reasonable probability that disclosure would have altered the result of the trial. That, Marc Dann, failed to provide, Mr. Jone, with a Full copy of such Documents.

Second Assignment of Error

Under State V. Cotton, the former Attorney General Marc Dann, used False Information of which he submitted to the District Court in he's report, and Relator is requesting for facts' and merits' concerning such report.

THIRD ASSIGNMENT OF ERROR

The Ohio Attorney General Marc Dann, did interfere with, Jones Civil Rights' when he utilized such False Information to the District Court.

FOURTH ASSIGNMENT OF ERROR

The Trial Court erred when it dismissed Mr Jones's claim with out, First conducting a hearing on the Merits' and Facts', because Mr. Jones's, claim, appears to be justifiable claim, that, Marc Dann, "Abuse his Authority", when he used such False Information in his report submitted to the District Court 149(B)(8) and finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(Sic passim.)

III. Fourth Assignment of Error

{¶8} Because plaintiff's fourth assignment of error resolves his appeal, we first address it.

{¶9} In deciding whether to dismiss a complaint pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, the trial court must presume all factual allegations in the complaint are true and construe the complaint in the light most favorable to the plaintiff, drawing all reasonable inferences in favor of the plaintiff. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. Before the court may dismiss the complaint, it must appear beyond doubt from the complaint that the plaintiff can prove no

set of facts entitling the plaintiff to recovery. *O'Brien v. Univ. Community Tenants Union* (1975), 42 Ohio St.2d 242, syllabus.

{¶10} R.C. 149.43(B)(8) provides that "[a] public office or person responsible for public records is not required to permit" an individual incarcerated as a result of a criminal conviction "to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution" unless two requisites are met. Initially, the information must be "subject to release as a public record" under R.C. 149.43. Secondly, "the judge who imposed the sentence" must determine "the information sought in the public record is necessary to support what appears to be a justiciable claim of the person."

{¶11} As the trial court properly noted, plaintiff's complaint fails to allege the trial judge who imposed the sentence determined the documents plaintiff seeks "are necessary to support what appears to be a justiciable claim." R.C. 149.43(B)(8); *State ex rel. Russell v. Bican*, 112 Ohio St.3d 559, 2007-Ohio-813 (denying production of requested document in absence of sentencing judge's finding that the documents are necessary to support what appears to be a justiciable claim under R.C. 149.43(B)(4), now R.C. 149.43(B)(8)); *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858 (same); *State ex. rel Britford v. Columbus Police Dept.*, 10th Dist. No. 07AP-483, 2008-Ohio-25 (same).

{¶12} Because plaintiff's prayer for relief of his complaint seeks production of the requested document, but the complaint fails to allege compliance with R.C. 149.43(B)(8), we overrule plaintiff's fourth assignment of error. Because, as best we can discern, the remaining assignments of error either repeat the gist, or are derivative, of plaintiff's fourth assignment of error, his remaining assignments of error likewise are overruled.

{¶13} Having overruled all four of plaintiff's assignments of error, we affirm the judgment of the trial court.

Judgment affirmed.

KLATT and McGRATH, JJ., concur.
