

[Cite as *Peake v. State*, 2011-Ohio-623.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96165

ROGER PEAKE

RELATOR

vs.

STATE OF OHIO, JUDGE SHIRLEY S. SAFFOLD

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 440827
Order No. 441190

RELEASE DATE: February 9, 2011

FOR RELATOR

Roger Peake, pro se
Inmate No. 573-377
Marion Correctional Institution
P.O. Box 57
Marion, Ohio 43301-0057

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: James E. Moss
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA A. BLACKMON, J.:

{¶ 1} Roger Peake has filed a complaint for a writ of mandamus. Peake seeks an order from this court, which requires Judge Shirley Strickland Saffold to grant fifty-four days of additional jail-time credit in the underlying action of *State v. Peake*, Cuyahoga County Court of Common Pleas Case No. CR-516456. For the following reasons, we grant Judge Saffold's motion for summary judgment and decline to issue a writ of mandamus on behalf of Peake.

{¶ 2} Initially, we find that Peake's complaint for a writ of mandamus is procedurally defective. A complaint for a writ of mandamus must be brought in the name of the state of Ohio, on relation of the person applying for the writ. Herein, Peake has failed to properly caption his complaint for a writ of mandamus. The failure of Peake to properly caption his complaint warrants dismissal. *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766; *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

{¶ 3} Peake has also failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint must be supported by an affidavit that specifies the details of his claim. The failure of Peake to comply with the supporting affidavit requirement of Loc.App.R. 45(B)(1)(a) requires dismissal of the complaint for a writ of mandamus. *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 4} It must also be noted Peake has failed to comply with R.C. 2969.25(C), which requires that an inmate, who files a complaint against a government entity or government employee, must support the complaint with a statement that: (1) sets forth the balance in the

inmate's account for the preceding six months, as certified by the institutional cashier; and (2) a statement that sets forth all other cash and items of value as owned by the inmate. The failure of Peake to comply with R.C. 2969.25(C) warrants dismissal of his complaint for a writ of mandamus. *Martin v. Woods*, 121 Ohio St.3d 609, 2009-Ohio-1928, 906 N.E.2d 1113. In addition, Peake has failed to comply with R.C. 2969.25(A), which requires the attachment of an affidavit to the complaint for a writ of mandamus that describes each civil action or appeal filed within the previous five years in any state or federal court. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *State ex rel. Alford v. Winters*, 80 Ohio St.3 285, 1997-Ohio-117, 685 N.E.2d 1242.

{¶ 5} Finally, Peake's request for a writ of mandamus is moot. Attached to the motion for summary judgment is a journal entry, which demonstrates that Peake has been granted additional jail-time credit in the amount of fifty-four days. Thus, Peake's request for a writ of mandamus is moot. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723; *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163. Any error associated with the calculation of jail time credit must be addressed through an appeal. *State ex rel Britton v. Foley-Jones* (March 5, 1998), Cuyahoga App. No. 73646; *State ex rel. Spates v. Sweeney* (April 17, 1997), Cuyahoga App. No. 71986.

{¶ 6} Accordingly, we grant Judge Saffold's motion for summary judgment. Costs to Peake. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Writ denied.

PATRICIA A. BLACKMON, JUDGE

MARY EILEEN KILBANE, A.J., and
KENNETH A. ROCCO, J., CONCUR