

[Cite as *State v. Perry*, 2009-Ohio-1606.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92873

STATE OF OHIO

RESPONDENT

vs.

RAY A. PERRY

RELATOR

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 419744
ORDER NO. 419965

RELEASE DATE: March 30, 2009

FOR RELATOR:

Ray A. Perry, pro se
Inmate No. 534-311
Lake Erie Correctional Inst.
P.O. Box 8000
Conneaut, Ohio 44030

ATTORNEYS FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor

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

JAMES J. SWEENEY, J.:

{¶ 1} Ray A. Perry has filed a complaint for a writ of mandamus. Perry seeks an order from this court, which requires Judge Carolyn B. Friedland to render a ruling with regard to a motion for jail time credit as filed in *State v. Perry*, Cuyahoga County Court of Common Pleas Case No. CR-474846. Judge Friedland has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} Initially, we find that Perry's complaint for a writ of mandamus is defective, since it is improperly captioned. The complaint for a writ of mandamus must be brought in the name of the state on relation of the person applying. R.C. 2731.04; *Maloney v. Court of Common Pleas of Allen Cty.* (1962),

173 Ohio St. 226, 181 N.E.2d 270; *Gannon v. Gallagher* (1945), 145 Ohio St. 170, 60 N.E.2d 666.

{¶ 3} Further review of the complaint for a writ of mandamus discloses that Perry has failed to comply with R.C. 2969.25, 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. Perry's failure to comply with R.C. 2969.25 warrants the dismissal of the complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. It must also be noted that Perry has failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that his complaint for a writ of mandamus must be supported by an affidavit that specifies the details of the claim. *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 4} Finally, Perry's request for a writ of mandamus is moot. Attached to the motion for summary judgment is a copy of a judgment entry, as journalized on March 16, 2009, which demonstrates that Perry has been granted jail time credit in the amount of one hundred and thirty-two days. Thus, Perry's request for a writ of mandamus is moot. *State ex rel. Jerningham v. Cuyahoga Cty. Court*

of Common Pleas (1996), 74 Ohio St.3d 278, 658 N.E.2d 723; *State ex rel. Snider v. Stapleton* (1992), 65 Ohio St.3d 40, 600 N.E.2d 240; *State ex rel. Richard v. Wells* (1992), 64 Ohio St.3d 76, 591 N.E.2d 1240; *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163.

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

Writ denied.

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR