

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE EX REL., BRIAN A. ROSSITER	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Relator	:	Hon. Craig R. Baldwin, J.
	:	Hon. Earle E. Wise, J.
-vs-	:	
	:	
CURRENT JUDGE OR IN THE	:	Case No. 2017CA0013
ALTERNATIVE HONORABLE ROBERT	:	
J. BATCHELOR JUDGE COURT OF	:	
COMMON PLEAS COSHOCTON	:	
COUNTY	:	
	:	
Respondent	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Writ of Mandamus

JUDGMENT: Dismissed

DATE OF JUDGMENT: February 26, 2018

APPEARANCES:

For Relator

BRIAN A. ROSSITER, pro se
A707864
Warren Correctional Institution
P.O. Box 120
Lebanon, Ohio 45036

For Respondent

JASON W. GIVEN
Coshocton County Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812

Baldwin, J.

{¶1} Relator, Brian A. Rossiter, has filed a complaint for writ of mandamus requesting this Court order Respondent to issue a ruling on “Relator’s motion for new trial pursuant to newly discovered evidence.”

{¶2} Respondent has filed a motion to dismiss for failure to state a claim upon which relief may be granted.

{¶3} Relator’s complaint does not include a copy of the motion nor does it include a date the motion was filed. Coshocton County Case Number 15CR0111 is listed in the caption of the complaint for writ of mandamus, therefore, this Court assumes the motion for new trial was filed in Case Number 15CR0111. The Court has reviewed the Coshocton County Clerk of Court’s online docket and ordered Case Number 15CR0111 for review. The Court does not find a motion for new trial either on the docket or physically located in the trial court file.

{¶4} The Ohio Supreme Court’s Rules of Superintendence 40(A)(3) states that “[a]ll motions shall be ruled upon within one hundred twenty days from the date the motion was filed * * *.” The Ohio Supreme Court has held that this rule does not give rise to an enforceable right in mandamus or procedendo. *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013–Ohio–1762, 988 N.E.2d 564, ¶ 8.

{¶5} Relator has failed to plead sufficient information directing this Court to the motion. Without a copy of the motion or the file stamp date, the Court cannot determine whether Respondent has ruled on the motion or whether an excessive amount of time has passed warranting a writ of mandamus.

{¶6} Relator has failed to demonstrate the elements required for the issuance of a writ of mandamus, therefore, the complaint is dismissed.

By: Baldwin, J.

W. Scott Gwin, P.J. and

Earle Wise, J. concur.