

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE ex rel RICHARD KING,	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Relator,	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
JUDGE MARK C. FLEEGLE,	:	Case No. CT2019-0013
	:	
Respondent.	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Writ of Mandamus

JUDGMENT: Dismissed

DATE OF JUDGMENT: September 27, 2019

APPEARANCES:

For Relator

RICHARD KING, Pro Se
#489-103
P.O. Box 1812
Marion, Ohio 43301

For Respondent

D. MICHAEL HADDOX
Prosecuting Attorney
Muskingum County, Ohio

By: MARK A. ZANGHI
Assistant Prosecuting Attorney
P.O. Box 189, 27 N. 5th Street, Suite 201
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Baldwin, J.

{¶1} On February 21, 2019, Richard King filed a petition for writ of mandamus requesting that this Court order Judge Mark C. Fleegle to resentence him to correct his “illegal sentence that is void.” Mr. King contends the jury’s verdict form for count one of pandering obscenity involving a minor did not indicate a degree of felony, and therefore, he could only be sentenced to eighteen months for the lowest degree felony rather than eight years for the highest degree felony.

{¶2} For a writ of mandamus to issue, the Relator must have a clear legal right to the relief prayed for, the Respondent must be under a clear legal duty to perform the requested act, and Relator must have no plain and adequate remedy in the ordinary course of law. (Citation omitted.) *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 29, 451 N.E.2d 225 (1983).

{¶3} The Muskingum County Prosecutor, on behalf of Judge Fleegle, has moved to dismiss Mr. King’s writ for various statutory deficiencies. In response, Mr. King filed a Motion to Correct/Supplement and Reply to Respondent’s Motion to Dismiss. The Court grants Mr. King’s request to correct/supplement his writ of mandamus. However, even with these corrections/supplementations Mr. King’s writ still fails to satisfy certain mandatory, statutory requirements requiring dismissal of the writ.

{¶4} First, the writ fails to satisfy the statutory requirements of R.C. 2969.25. This statute contains specific filing requirements for inmates who file a civil action against a government employee or entity. The statutory requirements of R.C. 2969.25 apply here because Judge Mark C. Fleegle is a “government employee” and the Muskingum County Common Pleas Court is a “government entity” as those terms are defined under R.C.

2969.21(B)(1)(a) and (C). Further, Mr. King is incarcerated in the North Central Correctional Institution and therefore satisfies the definition of “inmate” under R.C. 2969.21(D).

{¶5} Under R.C. 2969.25(A), an inmate who files a civil action or appeal against a government entity or employee “shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.” An inmate is required to strictly comply with the statute. *State ex rel. Swanson v. Ohio Dept. of Rehab. & Corr.*, 156 Ohio St.3d 408, 2019-Ohio-1271, ¶ 6. The affidavit must contain certain information, including:

The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate’s counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award.

R.C. 2969.25(A)(4).

{¶6} Failure to follow the mandatory requirements of R.C. 2969.25(A) in the commencement of an action requires dismissal. *State ex rel. Graham v. Findlay Mun. Court*, 106 Ohio St.3d 63, 2005-Ohio-3671, ¶6. (“The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subject an inmate’s action to dismissal.”) See also *State ex rel. Hall v. Mohr*, 140 Ohio St.3d 297, 2014-Ohio-3735, ¶4. Further, the Ohio Supreme Court recently affirmed the mandatory nature of the statute in *Swanson* where

the Court dismissed a mandamus action because the inmate failed to include in his affidavit a mandamus action that he had filed weeks earlier. *Swanson*, 2019-Ohio-1271, at ¶7.

{¶7} Here, Mr. King initially failed to attach the required affidavit to his writ of mandamus. After the Muskingum County Prosecutor moved to dismiss Mr. King's writ on this basis, Mr. King moved to correct this statutory deficiency and filed the required affidavit. However, the affidavit is incomplete. It fails to identify all of the civil actions Mr. King has filed or appealed from in the past five years. Instead, Mr. King's affidavit only identifies a case he filed against the Ohio Department of Rehabilitation and Correction, in the Court of Claims, Franklin County, Case No. 2014-00280-AD.

{¶8} However, Mr. King has also filed the following civil actions: (1) on November 19, 2015, Mr. King appealed the trial court's denial of his Motion to Vacate Void Conviction Pursuant to Civ.R. 52(B); (2) on June 20, 2016, Mr. King appealed this Court's decision to the Ohio Supreme Court, Case No. 2016-0915; (3) on October 31, 2016, Mr. King appealed the trial court's denial of his Motion to Correct a Void Judgment Entry; (4) on January 13, 2017, Mr. King appealed this Court's decision to the Ohio Supreme Court, Case No. 2017-0069; (5) on February 27, 2017, Mr. King filed a Notice of Appeal to the Ohio Supreme Court, Case No. 2017-0283; (6) on February 23, 2017, Mr. King filed a post-conviction relief petition; (7) on April 3, 2017, Mr. King filed a Notice of Appeal appealing the trial court's decision denying his petition for post-conviction relief, Case No. CT2017-0021; (8) on July 10, 2017, Mr. King filed a Notice of Appeal in the Ohio Supreme Court, Case No. 2017-0924; (9) on July 7, 2017, Mr. King filed a Motion to Correct Sentence (post-conviction relief petition); (10) on July 13, 2017, Mr. King filed an Affidavit

of Disqualification of Judge Fleegle in the Ohio Supreme Court, Case No. 17-AP-067; (11) on November 27, 2017, Mr. King filed a Notice of Appeal that denied his Motion to Correct Sentence, Case No. CT2017-0091; and (12) on June 11, 2018, Mr. King filed a Notice of Appeal in the Ohio Supreme Court, Case No. 2018-0800.

{¶9} Mr. King again attempted to remedy this statutory deficiency by filing Relator's Reply to Respondent's Memorandum-Contra to Relator's Motion to Correct/Supplement and Reply to Respondent's Motion to Dismiss. Mr. King attached a revised affidavit. However, this affidavit is also deficient. Although it identifies a Writ of Habeas Corpus currently pending before the Sixth Circuit Court of Appeals, Case No. 19-3168, it fails to mention any of the civil actions set forth above.

{¶10} For these reasons, Mr. King's writ is dismissed.

{¶11} The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. See Civ.R. 58(B).

By: Baldwin, J.

Hoffman, P.J. and

Delaney, J. concur.