

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio, ex rel.  
Ennie Ray McGlown Jr.

Court of Appeals No. L-20-1101

Relator

v.

Bernie Quilter

**DECISION AND JUDGMENT**

Respondent

Decided: December 10, 2020

\* \* \* \* \*

Ennie Ray McGlown Jr., pro se.

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Evy M. Jarrett, Assistant Prosecuting Attorney, for respondent.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} In this original action, relator Ennie Ray McGlown Jr. seeks a writ of mandamus, compelling the respondent, Bernie Quilter, Clerk of Courts for the Lucas County Court of Common Pleas, to provide various records related to his criminal case, *State v. McGlown*, Lucas County Court of Common Pleas case No. CR0200503412.

{¶ 2} On October 1, 2020, we issued an alternative writ, ordering that the respondent either release the documents or show cause as to why he is not required to do so by filing an answer to the petition or a motion to dismiss.

{¶ 3} On October 14, 2020, the respondent filed a motion to dismiss pursuant to Civ.R. 12(B)(6), arguing that the petition failed on multiple grounds. As set forth below, we find respondent's motion well-taken, and therefore, we dismiss McGlown's petition.

### **Facts and Procedural History**

{¶ 4} In 2007, McGlown was convicted of gross sexual imposition and six counts of rape and sentenced to serve 36 years in prison. *Id.* His conviction and sentence were affirmed on appeal. *State v. McGlown*, 6th Dist. Lucas No. L-07-1163, 2009-Ohio-2160.

{¶ 5} On April 27, 2020, McGlown directed a public records request to the respondent. In it, McGlown requested the following items: (1) the September 11, 2006 hearing transcript of the "hearing on in-camera [sic] inspection"; (2) the judgment entry pertaining to the September 11, 2006 hearing; (3) the "motion for new trial filed March 20, 2007"; (4) the "sentencing hearing transcripts of April 19, 2007"; (5) respondent's records retention schedule; (6) respondent's public records policy; (7) "And Oath of Office."

{¶ 6} On June 23, 2020, McGlown filed the instant petition, in which he alleged that the respondent "ha[d] not responded to the public records request."

{¶ 7} In support of the motion to dismiss, the respondent relies upon an affidavit from Deputy Clerk Kellan Baker, who identified and attached a June 24, 2020 letter from

the respondent's office to McGlown. According to Baker, respondent provided that letter and enclosed with it item Nos. 2, 3, 5, and 6. (Deputy Clerk K. Baker Aff. at ¶ 2). With regard to item No. 7, the letter indicates that respondent "will provide" the oath of office once McGlown identified, by name and year, the particular oath he was seeking. With respect to item Nos. 1 and 4—the transcripts—the letter states, "[u]nfortunately, we are unable to locate the specific transcript proceeding you outlined in your request at this time. \* \* \* Unless there was already a specific request for transcripts on a specific date, those transcripts are not generated. You may be the first person to request these specific transcripts, and thus none are currently generated for your case file." The respondent referred McGlown to the court reporter's office. (Ex. B.)

{¶ 8} In his motion to dismiss the petition, the respondent argues that McGlown's petition fails to establish any of the elements of a mandamus claim and therefore must be dismissed.

### **Law and Analysis**

{¶ 9} The standard for reviewing the sufficiency of a mandamus complaint was stated in *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992): "In construing a complaint upon a motion to dismiss for failure to state a claim, the material allegations of the complaint are taken as admitted. All reasonable inferences must also be drawn in favor of the nonmoving party. Then, 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 him to recovery.” (Internal quotations omitted.) *Id.*

{¶ 10} For a writ of mandamus to issue, the relator must demonstrate (1) that relator has a clear legal right to the relief prayed for and (2) that the respondent is under a clear legal duty to perform the acts requested. *See generally State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 451 N.E.2d 225 (1983). “Unlike in other mandamus cases, relators in public-records mandamus cases are not required to establish the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Ullmann v. Klein*, Slip Opinion No. 2020-Ohio-2974, ¶ 11, quoting *State ex rel. Data Trace Info. Servs., L.L.C. v. Cuyahoga Cty. Fiscal Officer*, 131 Ohio St. 3d 255, 2012-Ohio-753, 963 N.E.2d 1288, ¶ 25.

{¶ 11} The Public Records Act, as set forth in R.C. 149.43, governs “[a]ccess to case documents in actions commenced prior to July 1, 2009.” *State ex rel. Bey v. Byrd*, 160 Ohio St.3d 141, 2020-Ohio-2766, 154 N.E.3d 57, ¶ 11. For case documents requested in cases that commenced on or after July 1, 2009, the Rules of Superintendence apply, specifically the public-access provisions set forth in Sup.R. 44 through 47. *Id.* at ¶ 11, citing Sup.R. 44(C)(1). Here, the criminal case against McGlown was commenced by indictment on November 10, 2005. Therefore, R.C. 149.43 applies to those records sought by McGlown that pertain to his criminal case, i.e., item Nos. 1-4.

{¶ 12} The Public Records Act entitles persons access to documents and materials which fall within the statutory definition of “public records.” R.C. 149.43(B)(8) applies to requests made by incarcerated individuals. It provides,

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction \* \* \* to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution \* \* \*, *unless* the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or *the judge’s successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.* (Emphasis added.)

{¶ 13} “Inmates are prohibited from accessing otherwise public records absent a finding from their sentencing judge that the records are necessary to support a justiciable claim. Absent such a judicial finding, an action in mandamus against a public person responsible for public records is barred.” *State v. Lather*, 6th Dist. Sandusky No. S-08-036, 2009-Ohio-3215, ¶ 10 (Finding no abuse of discretion by lower court’s denial of request for records where inmate “filed his request in a civil forfeiture action, but he specifically claimed that the alleged public records are necessary to support his claims of ineffective assistance of counsel and prosecutorial misconduct related to his criminal

trial. These claims are unrelated to the civil forfeiture action in which [the defendant] sought the records.”).

{¶ 14} Here, McGlown’s petition does not include a finding from the trial judge who tried his criminal case (or successor) that the records “are necessary to support what appears to be a justiciable claim.” Accordingly, he cannot show that he has a clear legal right to item Nos. 1-4, nor a corresponding duty on the part of the respondent to produce them.

{¶ 15} Nonetheless, of the items that are subject to the Public Records Act, two of them, specifically item Nos. 2 and 3, were provided to McGlown. Respondent also provided item No. 5 (the respondent’s records retention policy) and item No. 6 (respondent’s records policy). (See Ex. B. attached to Baker Aff.). “A public office may produce the requested records prior to the court’s decision, which generally renders a claim involving the failure to produce records moot.” *Ullman* at ¶ 12, citing *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, 950 N.E.2d 952, ¶ 18-22. *See also State ex rel. Toledo Blade Co. v. Seneca County Board of Commissioners*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961, ¶ 43 (A mandamus claim is moot when the requested records have been provided). Because respondent provided McGlown with item Nos. 2, 3, 5 and 6, his petition as to those items is moot.

{¶ 16} Finally, with respect to McGlown’s request for the “Oath of Office,” set forth in item No. 7, we find that it lacks the requisite specificity to establish a clear legal duty, on behalf of the respondent, to respond. A request for documents must identify the

particular records in order for an intelligent response to be made to the request. *State ex rel. Rivers v. Miller*, 10th Dist. Franklin No. 93AP-945, 1993 WL 524922 (Dec. 16, 1993). In the absence of a request that includes identifying information, including the particular office, office-holder and term of office, the respondent is under no clear legal duty to respond to such a request. *Id.* Dismissal as to item No. 7 is therefore also proper.

{¶ 17} McGlown has failed to establish a clear legal right to the relief prayed for or that the respondent is under a clear legal duty to provide it. Therefore, McGlown is not entitled to a writ of mandamus, and the petition is hereby ordered dismissed at relator's costs. It is so ordered.

Writ denied.

Arlene Singer, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Christine E. Mayle, J.  
CONCUR.

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JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <a href="http://www.supremecourt.ohio.gov/ROD/docs/">http://www.supremecourt.ohio.gov/ROD/docs/</a>.</p>
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