[Cite as *Jones v. Mahoning Cty. Clerk of Court,* 2019-Ohio-1097.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

AARON L. JONES, SR.,

Plaintiff-Appellant,

v.

MAHONING COUNTY CLERK OF COURT,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 18 MA 0074

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2018 CV 718

BEFORE:
Carol Ann Robb, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:
Affirmed.

Aaron Jones, *Sr.*, *pro se*, A511-342, 2500 South Avon Beldon Road, Grafton, Ohio 44044 for Plaintiff-Appellant and

Atty. Paul J. Gains, Mahoning County Prosecutor, 21 West Boardman Street, 6th Floor, *Atty*. *Gina Zawrotuk*, Assistant Prosecuting Attorney, 21 West Boardman Street, 5th Floor, Youngstown, Ohio 44503, for Defendant-Appellee.

Dated: March 18, 2019

Robb, J.

{¶1} Plaintiff-Appellant Aaron L. Jones Sr. appeals the decision of the Mahoning County Common Pleas Court dismissing the action he filed against Mahoning County Clerk of Court Anthony Vivo. He contends the court erred in not continuing the case to allow for his appearance at a hearing on the Clerk of Court's motion to dismiss and states the trial court should order his production from prison. He also argues the court erred in sustaining the motion to dismiss. For the following reasons, the trial court judgment is affirmed.

STATEMENT OF THE CASE

{¶2} On March 15, 2018, Appellant filed a pro se action against the Clerk of Courts. His pleading cited R.C. 2743.48 (the statute defining a wrongful imprisonment claim) and asserted he was wrongfully imprisoned for aggravated burglary and aggravated robbery after being convicted in Mahoning County Common Pleas Court Case Number 06 CR 95. On this topic, he set forth the following allegations: ineffective assistance of counsel at trial and on appeal; suppression; inadmissible evidence undermining the fairness of trial; due process violations; insufficient evidence of guilt; perjury; weight of the evidence; use of a key to commit burglary; and speedy trial.

{¶3} Amid his allegations on wrongful imprisonment, Appellant also inartfully accused the Clerk of Courts of improperly docketing his April 10, 2013 and March 2, 2018 filings in the criminal case instead of as separate civil actions; he characterized these filings as his attempts to file wrongful imprisonment actions. He quoted R.C. 2743.48(B)(1), which states the "civil action to be declared a wrongfully imprisoned individual" shall be filed in the court of common pleas in the county where the underlying criminal action was initiated and "[t]hat civil action shall be separate from the underlying finding of guilt by the court of common pleas."

{¶4} The Clerk of Courts filed a motion to dismiss the action for failure to state a claim upon which relief can be granted. The motion set forth two reasons for dismissal. First, the motion argued a clerk of courts is not a proper party in a wrongful imprisonment action under R.C. 2743.48, which demonstrates the state is the real party in interest to such an action and the state bears the ultimate risk of a monetary judgment under the wrongful imprisonment statute. Second, the motion asserted the complaint did not allege the "conviction was vacated, dismissed, or reversed on appeal" which is an element of the claim under R.C. 2743.48(A)(4). It was urged that Appellant admitted this element was not satisfied as he conceded he still "sits in prison" as a result of the criminal case for which he claims wrongful imprisonment and he sought to be released and compensated.

{¶5} Appellant responded to the motion to dismiss criticizing the attorney representing the Clerk of Courts for not realizing that he was not accusing the Clerk of Courts of wrongful imprisonment but was accusing the Clerk of Courts of negligently violating the language in the wrongful imprisonment statute, which defines the action as a civil action to be filed separately from the criminal action. He attached a copy of the docket in the criminal case showing his 2013 and 2018 "demands" for release due to alleged wrongful imprisonment.

{¶6} Still, he presented arguments on wrongful imprisonment and attached this court's December 19, 2017 judgment entry in a post-conviction appeal, wherein we issued a limited remand to the trial court for a nunc pro tunc entry to correct the post-release control portion of Appellant's sentence. Appellant criticized this ruling, claiming a nunc pro tunc entry was improper as his sentence was void due to the post-release control issue.

{¶7} On June 22, 2018, the trial court granted the motion to dismiss. The court concluded Appellant failed to allege a cognizable action against the Clerk of Courts. The court further found Appellant's pleading failed to assert a claim under R.C. 2743.48 that he was a wrongfully imprisoned individual as his conviction was not vacated, dismissed, or reversed on appeal. Appellant filed a timely notice of appeal.

MOTION TO DISMISS

{¶8} To dismiss a complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, it must appear beyond doubt the plaintiff can prove no set of facts in support of the claim which would entitle him to the relief sought. *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, 956 N.E.2d 814, ¶ 12. A motion to dismiss for failure to state a claim upon which relief can be granted is a procedural mechanism which tests the sufficiency of the complaint on its face. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992) (applying the rule to a mandamus action). The allegations of the complaint are assumed to be true and are construed in the non-movant's favor, along with any reasonable inferences. *Id.*

{¶9} Under the notice pleading required by Civ.R. 8(A), the complaint shall contain: "(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled." Although a plaintiff is not required to prove his case in the complaint, the complaint must allege the facts constituting the elements of the claim with sufficient particularity so that reasonable notice is given to the opposing party. *In re Election Contest of Democratic Primary Held May 4, 1999 for Clerk, Youngstown Mun. Court*, 87 Ohio St.3d 118, 120, 717 N.E.2d 701 (1999). Furthermore: "Legal conclusions in a complaint do not enjoy a presumption of truth under a Civ.R. 12(B)(6) review." *Marks v. Reliable Title Agency, Inc.*, 7th Dist. No. 11 MA 22, 2012-Ohio-3006, ¶ 10. In other words, where there is a failure to allege one of the elements of the claim, we do not presume the existence of the element because the plaintiff generally asserted a named claim. The appellate court conducts a de novo review of a Civ.R. 12(B)(6) dismissal. *McKinley*, 130 Ohio St.3d 156 at ¶ 12.

HEARING ON MOTION TO DISMISS

{¶10} Appellant's first two assignments of error provide:

"THE TRIAL COURT ERRED IN NOT CONTINUING THE CASE FOR NON APPEARANCE OF PLAINTIFF BEING THAT PLAINTIFF IS THE 'PRIME' LITIGANT INITIATING CASE NO. 2018-CV-718."

"THE TRIAL COURT CAN RESCHEDULE AND PRODUCE PLAINTIFF, AARON L. JONES SR. THE 'PRIME' LITIGANT IN SAID CASE UPON DICTA SUPPLIED IN THE

RESPONSE TO THE MISSED/BOTCHED PREVIOUS HEARING, MAY 18th, 2018, AND THE CASELAW ESTABLISHED FROM PLAINTIFF IN THIS MATTER."

{¶11} After the Clerk of Courts filed the motion to dismiss, two notices of assignment were issued on April 16, 2018, setting a motion hearing and a status hearing for May 18, 2018. An entry filed on May 21, 2018 stated: the case was called for a status hearing; Appellant was unable to appear due to his incarceration; a non-oral hearing on the motion to dismiss would occur on June 20, 2018; and the status hearing would be rescheduled after a ruling on the motion to dismiss. On May 23, 2018, Appellant filed an objection to proceeding without his presence. The court issued the dismissal entry on June 22, 2018.

{¶12} On appeal, Appellant sets forth allegations about: his inquiries as to why he was not transported the day before the hearing from the prison in Lorain County to the hearing in Mahoning County; his mother believing it would be a video hearing; and his suspicion a prison secretary thwarted his appearance by video. Initially, we note the record contains no mention of a video appearance when setting the May 18, 2018 hearing. We also note a request within the complaint to appear in person (and to be transported from prison) if a hearing is granted on the allegations in his complaint is not equivalent to a request to be present at any future status hearing or at any future dismissal hearing if the defendant files a motion to dismiss. In any event, the May 18, 2018 hearing did not proceed as a dismissal hearing, which was reset. The May 18, 2018 status hearing was continued until after the motion to dismiss was resolved; however, because the case was later dismissed, the rescheduled status hearing was never held.

{¶13} As for the rescheduled dismissal hearing, Appellant suggests he had the right to be orally heard on the motion to dismiss and the trial court therefore should have set it for oral hearing (instead of a non-oral hearing) and ensured his presence at the rescheduled hearing. After the dismissal hearing was reset, Appellant did essentially object to proceeding in his absence. (Response 5/13/18). However, the hearing was reset to proceed as a *non-oral* hearing.

{¶14} Appellant cites Crim.R. 43(A). However, this is a criminal rule providing "the defendant must be physically present at every stage of the criminal proceeding and trial" (except as otherwise provided) and sets forth the procedure for contemporaneous video

arrangements upon a waiver of presence. Likewise, his citation to the Confrontation Clause in his reply brief is not pertinent to a civil case. *See* U.S. Constitution, Sixth Amendment. *See also State Auto. Mut. Ins. Co. v. Lytle*, 10th Dist. No. 84AP-424 (1985) ("Because this is a civil case, the Confrontation Clause has no application"). As Appellant emphasizes, this is a civil case, separately filed from the criminal case which allegedly gave rise to his wrongful imprisonment claim.

{¶15} There is no evidentiary hearing on a Civ.R. 12(B)(6) motion to dismiss as factual findings are not required when ruling on such a motion, which involves the face of the complaint. *Demeraski v. Bailey*, 8th Dist. No. 102304, 2015-Ohio-2162, 35 N.E.3d 913, ¶ 17; *Cummings v. Ohio Dept. of Rehab. & Correction*, 5th Dist. No. 2002CA0065, 2003-Ohio-1250, ¶ 18; *Savage v. Godfrey*, 10th Dist. No. 01AP-388 (Sep. 28, 2001); *Rutledge v. Ohio Dept. of Rehab. & Correction*, 11th Dist. No. 98-T-0191 (Mar. 3, 2000). The review parameters for a Civ.R. 12(B)(6) motion were set out supra.

{¶16} The failure to hold an oral hearing on a motion to dismiss under Civ.R. 12(B)(6) constitutes "no error by the trial court as motions may be decided wholly on papers, and the dismissal of a complaint without an oral hearing does not violate due process." *Savage*, 10th Dist. No. 01AP-388, citing *Greene v. WCI Holdings Corp.*, 136 F.3d 313, 315-316 (C.A.2 1998). A court properly "hears" a motion to dismiss by considering said motion and the defendant's response without conducting an oral hearing. *Phung v. Waste Mgt., Inc.*, 40 Ohio App.3d 130, 131, 532 N.E.2d 195, 198 (6th Dist.1988) (construing Civ.R. 12(D)'s discussion of a "preliminary hearing" on a motion to dismiss as merely limiting the court's ability to consider a dismissal motion after trial). *See also State ex rel. Clemons v. Kasich*, 153 Ohio St.3d 1449, 2018-Ohio-3025, 103 N.E.3d 828 (summarily granting respondent's motion to dismiss mandamus action and denying petitioner's request for "preliminary hearing").

{¶17} Pursuant to Civ.R. 7(B)(2), "the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition." Mahoning County Civil Local Rule 6(A)(1) provides a motion shall not be set for oral hearing unless approved or ordered by the court. The trial court decided against an oral hearing on the motion to dismiss, and no error is apparent in this decision. As there is no indication the court erred in ruling on

the motion to dismiss without an oral hearing, Appellant's arguments as to the failure to ensure his presence at a hearing are overruled.

WRONGFUL IMPRISONMENT

{¶18} Pursuant to R.C. 2743.48(B)(1): "A person may file a civil action to be declared a wrongfully imprisoned individual in the court of common pleas in the county where the underlying criminal action was initiated. That civil action shall be separate from the underlying finding of guilt by the court of common pleas. Upon the filing of a civil action to be determined a wrongfully imprisoned individual, the attorney general shall be served with a copy of the complaint and shall be heard." R.C. 2743.48(B)(1). If the court determines the person is a wrongfully imprisoned individual in this separate civil action, then the person has the right to commence a civil action against the state in the court of claims because of the person's wrongful imprisonment. R.C. 2743.48(B)(2).

{¶19} The statute thus encompasses a two-step process for a wrongfully imprisoned individual to obtain compensation from the state. *Doss v. State*, 135 Ohio St.3d 211, 2012-Ohio-5678, 985 N.E.2d 1229, ¶ 10. Before compensation can be sought in the court of claims: "The court of common pleas in the county where the underlying criminal action was initiated has exclusive, original jurisdiction to hear and determine a civil action or proceeding that is commenced by an individual who seeks a determination by that court that the individual satisfies divisions (A)(1) to (5) of section 2743.48 of the Revised Code." R.C. 2305.02.

{¶20} A "wrongfully imprisoned individual" is an individual who satisfies "each" of the following five statutory elements:

> (1) The individual was charged with a violation of a section of the Revised Code by an indictment or information, and the violation charged was an aggravated felony or felony.
>
> (2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.

(3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.

(4) **The individual's conviction was vacated, dismissed, or reversed on appeal**, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction.

(5) Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by the court of common pleas in the county where the underlying criminal action was initiated that the charged offense, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

(Emphasis added). R.C. 2743.48(A).

{¶21} Although we emphasized the portion of the fourth element, involving whether the "conviction was vacated, dismissed, or reversed on appeal," we note the fourth factor has two other mandatory parts, involving the lack of an appeal by the state and the lack of future charges related to the same acts. We also note the fifth factor refers to two alternative options: (1) an error in procedure resulted in the person's release during a certain time period; or (2) actual innocence, which the person must prove by a preponderance of the evidence during the first-step. *Doss*, 135 Ohio St.3d 211 at ¶ 12, 16 (the vacation of the conviction element is not enough to show actual innocence).

DISMISSAL OF ACTION

{¶22} Appellant's third assignment of error provides:

"TRIAL COURT CAN REVIEW THE ATTACHED JOURNAL ENTRY FROM CASE NUMBER 16MA192 GIVING REMAND OF PLAINTIFF'S CASE AND 2006 CONVICTION."

{¶23} Appellant takes issue with the trial court's finding that Appellant did not assert a claim under R.C. 2743.48 that he is a wrongfully imprisoned individual as his

"conviction was not vacated, dismissed, or reversed on appeal as require[d] by R.C. 2743.48(A)(4)." (J.E.at 2); (Apt.Br. at 4). Appellant's pleading initiating this action did not contend his criminal conviction had been vacated, dismissed, or reversed on appeal. In fact, he admitted he was still incarcerated for the pertinent convictions and essentially set forth reasons why he believed his conviction *should be* vacated, dismissed, or reversed in the future. Only the face of the complaint can be considered by the trial court when considering a motion to dismiss for failure to state a claim.

{¶24} Even if he would have successfully sought to amend his pleading (instead of simply responding to the motion to dismiss), Appellant's subsequent citation to this court's judgment entry in one of his post-conviction criminal appeals could not assist him in alleging the element in division (A)(4). Within his second and third assignments of error, Appellant posits that our limited remand for a nunc pro tunc entry to correct a post-release control issue was improper. *See State v. Jones*, 7th Dist. No. 16 MA 0192, 2017-Ohio-9376 (remanding for nunc pro tunc correction of sentencing entry where sentencing hearing transcript was not part of record for review). He relies on the principle that a court speaks only through its journal entry, citing *State v. Bedford*, 184 Ohio App.3d 588, 2009-Ohio-3972, 921 N.E.2d 1085 (9th Dist.) (and applying the overturned principle that the whole sentence is void due to a failure to properly impose post-release control). However, this principle (that a court speaks through its entry) provides support for the nunc pro tunc remedy and provides a rationale for why a reviewing court remands for a nunc pro tunc entry in certain cases. The nunc pro tunc entry procedure for post-release control is authorized by the Supreme Court where it is used to conform the entry to the court's oral pronouncement. *State v. Qualls*, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718 (omission of post-release control from sentencing entry is correctible with a nunc pro tunc entry).

{¶25} Appellant claims that if post-release control was not properly imposed, then the trial court lost jurisdiction to impose a sentence which is required for a conviction. However post-release control issues do not affect the sentence to a prison term or the conviction. *See State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 26-29 (when a judge fails to impose statutorily-mandated post-release control, only the post-release control portion of the sentence is affected). Contrary to Appellant's

insistence, a remand for a nunc pro tunc entry on post-release control could not satisfy the element of a wrongful imprisonment action requiring the conviction to be vacated, dismissed, or reversed on appeal. (Even a remand for a new hearing for the proper imposition of post-release control would not satisfy this element.) A remand on post-release control does not reverse a conviction, and it was the sentence on the conviction that Appellant was serving. *See id.*

{¶26} In addition to the post-release control issue, Appellant lists other reasons (under his second assignment of error) why he believes he should be considered wrongfully imprisoned, such as: a lack of evidence at trial; a speedy trial violation; and a suppression issue. Although an alleged lack of evidence may be relevant to the innocence element in R.C. 2743.48(A)(5), all elements are required. An allegation of insufficient evidence at trial does not allege the existence of the element within division (A)(4) of R.C. 2743.48. According to the clear and plain language of R.C. 2743.48, an action for wrongful imprisonment is not the place for seeking to have a conviction overturned. The vacation, dismissal, or reversal on appeal of the conviction must have already been accomplished in order to utilize the wrongful imprisonment statute. R.C. 2743.48(A)(4). *See, e.g., Doss*, 135 Ohio St.3d 211 (where the conviction had been reversed by the appellate court for insufficient evidence before the wrongful imprisonment action was commenced; and holding the mere vacation of the conviction is not enough to show actual innocence).

{¶27} As aforementioned (A)(4) has additional requirements besides having a conviction vacated, dismissed, or reversed on appeal; there must be no further appeal or additional criminal proceeding on the pertinent acts anticipated by the prosecutor. Just as there was no discussion in the complaint of a vacated, dismissed, or reversed conviction, there was no discussion of these additional (A)(4) requirements. In accordance, to the extent Appellant's action appeared to be a wrongful imprisonment action, the trial court's dismissal was proper as the face of the pleading initiating the action: admitted he was still in prison as a result of the criminal conviction he was utilizing for his wrongful imprisonment claim; set forth reasons *why* his conviction *should be* vacated; and did not assert the conviction had been vacated, dismissed, or reversed on

appeal (with no subsequent proceedings pending or able to be brought on the acts related to conviction).

{¶28} As to the alternative reason in the motion to dismiss, a trial court can also properly dismiss a wrongful imprisonment action which is filed against a person or entity who is not a proper party in the statutory action. Here, the Clerk of Courts was the sole defendant named in the action. However, the Clerk of Courts is not the proper defendant in an action seeking a declaration of wrongful imprisonment under R.C. 2743.48(B)(1).

{¶29} On this subject, the Tenth District noted the compensation step in (B)(2) specifically instructs the person to file the action against the state in the court of claims, but (B)(1) is not as explicit about who to file against when it instructs the person to file step one of the action in the common pleas court. *McClain v. State*, 10th Dist. No. 09AP-445, 186 Ohio App.3d 654, 2010-Ohio-1021, 929 N.E.2d 1099. In discussing the proper defendant in an action to be declared a wrongfully imprisoned individual under R.C. 2743.48(B)(1), the Tenth District specifically concluded, "the state is the real party in interest because it is the state that bears the ultimate risk of a monetary judgment." *Id.* at ¶ 17 (where the county prosecutor was named as the defendant).[1] This is why division (B)(1) instructs the person filing step one of the action to serve the attorney general. R.C. 2743.48(B)(1). *See also* R.C. 2743.48(F)(3) ("The state consents to be sued by a wrongfully imprisoned individual").

{¶30} Notably, in reviewing the burden in the first step of the statute, the Supreme Court also observed the purpose of R.C. 2743.48 and R.C. 2305.02 was legislatively specified as follows: "to authorize civil actions against the state, for specified monetary amounts, in the Court of Claims by certain wrongfully imprisoned individuals." *Walden v. State*, 47 Ohio St.3d 47, 49, 547 N.E.2d 962 (1989). The *Walden* Court further stated: "The action created by R.C. 2305.02 and 2743.48 is a waiver of the state's common-law sovereign immunity * * *." *Id.* at 53. There is no provision for filing a statutory wrongful imprisonment claim against a clerk of courts. Accordingly, to the extent Appellant's

[1] The other holding in the Tenth District's *McClain* case, concerning proper venue in Franklin County, has been changed by statutory amendments providing the action under (B)(1) shall be commenced "in the common pleas court in the county where the underlying criminal action was initiated."

pleading was construed as a wrongful imprisonment action, the dismissal was proper for the two alternative reasons discussed above.

{¶31} Regarding the trial court's construction of the action as a statutory action for wrongful imprisonment, Appellant's pro se pleading was not well-composed. He cited the wrongful imprisonment statute. He made allegations as to errors at trial and on appeal in support of his allegation that he should be released and compensated for his twelve years of imprisonment. For instance, Appellant's pleading alleged: a motion to dismiss on speedy trial grounds should have been granted; the victim committed perjury; he received ineffective assistance of counsel at trial by counsel's inadequate questioning of the victim, failure to seek an acquittal or a mistrial, and withdrawal of his motion to suppress; ineffective assistance of appellate counsel by failing to provide him with transcripts; erroneous admission of evidence which undermined the fairness of the trial; his due process rights were violated when he was convicted with no evidence of his guilt; a person who uses a key cannot commit burglary; and the victim's testimony on the robbery was not credible (he asked, "how many hands does this petitioner HAVE?" while discussing her testimony on how he assaulted her and held a gun). He attached to his pleading various documents he believed required reversal of his conviction (which he in turn believed supported his wrongful imprisonment claim). Considering these contentions, Appellant's action appeared to be a wrongful imprisonment action. As set forth above, such a claim was properly dismissed.

{¶32} Nevertheless, alternating portions of Appellant's pleading suggest he also intended to proceed against the Clerk of Courts on allegations that his two prior alleged attempts at filing a wrongful imprisonment action were improperly docketed in his criminal case rather than being assigned a new case number as a civil case pursuant to the requirements of R.C. 2743.48(B)(1). (We note Appellant did not attach the two filings to his pleading to show they were clearly civil actions rather than motions in a criminal case.)

{¶33} On this topic, Appellant suggests the trial court could have issued a habeas judgment in this action by construing the action as a petition for writ of habeas corpus. However, a petition for a writ of habeas corpus shall specify: "The officer, or name of the person by whom the prisoner is so confined or restrained * * *." *See State ex rel. Sherrills v. State*, 91 Ohio St.3d 133, 2001-Ohio-299, 742 N.E.2d 651 (affirming the sua sponte

dismissal of a petition for habeas corpus because the petitioner did not name the proper respondents). We also note Appellant "failed to attach any commitment papers to his petition, in violation of R.C. 2725.04(D). Such a failure is fatal to a petition for habeas corpus." *See State ex rel. Arroyo v. Sloan*, 142 Ohio St.3d 541, 2015-Ohio-2081, 33 N.E.3d 56, ¶ 3. Additionally, the form of the action does not suggest a habeas action, and Appellant filed the action in Mahoning County while incarcerated in Lorain County. "[A] habeas corpus action can only be maintained in the county where the inmate is incarcerated." R.C. 2725.03. A court lacks jurisdiction over a habeas action filed in a county other than the one where the petitioner is incarcerated. *Brown v. Hall*, 123 Ohio St.3d 381, 2009-Ohio-5592, 916 N.E.2d 807.

{¶34} Finally, although Appellant did not and does not mention any other type of original action, we note an action for writ of mandamus can be filed where a person has a clear legal right to performance of an act by a defendant with a clear legal duty "to do the act required to be performed" where there is no "plain and adequate remedy in the ordinary course of law." R.C. 2731.04; R.C. 2731.05; R.C. 2731.07; *Shoop v. State*, 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 432, ¶ 8 (the ability to appeal in another case is generally considered an adequate remedy in the ordinary course of law sufficient to preclude a writ). However, Appellant's convoluted pleading did not mention these elements, use the word "mandamus," or seek a writ ordering the clerk to transfer Appellant's recent filing docketed in his criminal case to a new and separate civil case.

{¶35} Furthermore, Appellant did not caption his pleading in this case in a manner that would signal it was an original action in mandamus. Pursuant to R.C. 2731.04, "Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying * * *." Appellant did not bring the action in the name of the state on his relation but filed the action in his individual capacity. Although not jurisdictional, the lacking information confirmed any construction of the pleading as a wrongful imprisonment action (against the wrong party without alleging a necessary element). "[A] petition for a writ of mandamus may be dismissed for failure to bring the action in the name of the state." *Shoop v. State*, 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 432, ¶ 10 (adding this as an alternative ground for upholding the lower court's dismissal of the action even though it was not specified as a reason by the lower court).

{¶36} Additionally, Appellant failed to comply with R.C. 2969.25(A), which mandates any inmate who commences a civil action against a government entity or employee to file an affidavit that contains a description of each civil action or appeal of a civil action the inmate has filed in the previous five years in any state or federal court. The Clerk of Courts is a government entity, and Appellant, incarcerated in an Ohio state prison, is an inmate. *Henderson v. Clerk of Courts*, 8th Dist. No. 100465, 2014-Ohio-2533, ¶ 5. "The requirements of R.C. 2969.25(C) are mandatory, and failure to comply with them subjects the complaint to dismissal." *State ex rel. Arroyo*, 142 Ohio St.3d 541 at ¶ 4.

{¶37} For all the foregoing reasons, Appellant's arguments protesting the trial court's dismissal of the action are without merit, and the trial court's judgment is affirmed.

Donofrio, J. concurs.

Waite, P.J. concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.