

[Cite as *State ex rel. Slater v. Gallagher*, 2018-Ohio-1742.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106974

STATE OF OHIO, EX REL.
KENNETH SLATER

RELATOR

vs.

THE HONORABLE SHANNON M. GALLAGHER

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Procedendo
Motion No. 516851
Order No. 516563

RELEASE DATE: May 2, 2018

FOR RELATOR

Kenneth Slater, pro se
Inmate No. 653248
Warren Correctional Institution
P.O. Box 120
Lebanon, Ohio 45036

ATTORNEY FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} Relator, Kenneth Slater, seeks a writ of procedendo directing the respondent judge¹ to rule on a motion to withdraw guilty pleas Slater asserts was filed in July 2017. Because Slater's complaint for writ of procedendo is fatally defective, this court dismisses the complaint.

I. Facts and Background

{¶2} In 2013, Slater was indicted and charged with multiple counts, including aggravated robbery, felonious assault, and kidnapping. As part of a plea agreement, in early 2014, he pled guilty to several counts, including those listed above. He received an eight-year prison sentence. His convictions and sentences were affirmed by this court. *State v. Slater*, 8th Dist. Cuyahoga No. 101358, 2014-Ohio-5552.

¹Pursuant to Civ.R. 25(D)(1), Judge Shannon M. Gallagher is substituted for Judge Richard J. McMonagle, the judge originally assigned to the underlying case.

{¶3} On March 23, 2018, Slater filed a complaint for a writ of procedendo. He seeks to have respondent judge rule on a motion to withdraw guilty pleas Slater alleges was filed in July 2017.² The complaint is, however, unsigned. Slater filed the same unsigned complaint for a writ of procedendo on March 26, 2018, but attached to it an affidavit of indigency and statement of account required by R.C. 2969.25(C).

II. Law and Analysis

{¶4} The complaint filed on March 23, 2018, is unsigned. Civ.R. 11 requires all complaints and motions to be signed. Failure to do so can result in the filing being disregarded as a sham or false by the tribunal to which it is submitted. *U.S. Bank Trust, N.A. v. Jacobs*, 6th Dist. Lucas No. L-14-1268, 2015-Ohio-4632, _ 12. Therefore, this court has discretion to dismiss the complaint for Slater’s failure to sign it. *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 127 Ohio St.3d 202, 2010-Ohio-5073, 937 N.E.2d 1274, _ 7. *See also State ex rel. Peebles v. Anderson*, 73 Ohio St.3d 559, 560, 653 N.E.2d 371 (1995) (Sua sponte dismissal is appropriate “when the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint.”).

{¶5} The complaint fails to comply with other rules governing original actions in the court of appeals. R.C. 2969.25(A) requires an affidavit that describes each civil action or appeal filed by the petitioner within the previous five years in any state or federal court. No such affidavit was attached to Slater’s complaint. The failure to comply with R.C. 2969.25(A) warrants dismissal of the complaint. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 696 N.E.2d 594 (1998).

² The docket from the lower case number referenced in his complaint, Cuyahoga C.P. CR-13-580429-A, does not contain any filings from July 2017.

{¶6} Additionally, Slater did not comply with R.C. 2969.25(C) in his initial complaint.

For inmates seeking a writ who wish to waive the filing fee, along with the complaint, an affidavit of indigency must be filed with a certified statement from the prison cashier setting forth the balance in the petitioner's private account for each of the preceding six months. The failure to do so is a defect that may not be cured by subsequent filings. *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378, ¶ 1. Therefore, Slater's later-filed complaint did not cure this defect. This is sufficient reason to deny the petition, deny indigency status, and assess costs against him. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842.

{¶7} For the above reasons, this court dismisses the complaint for a writ of procedendo.

Costs assessed against relator. The clerk of courts is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶8} Complaint dismissed.

ANITA LASTER MAYS, JUDGE

TIM McCORMACK, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR