

[Cite as *State v. Harris*, 2018-Ohio-1744.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106811

STATE OF OHIO

RELATOR

vs.

RONALD L. HARRIS, SR.

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 515561
Order No. 516694

RELEASE DATE: May 1, 2018

FOR RELATOR

Ronald L. Harris, Sr.
Inmate No. 0110807
Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} On February 12, 2018, the relator, Ronald Harris, Sr., commenced this mandamus action to compel the Cuyahoga County Common Pleas Court to rule on (1) a September 11, 2017 motion for fast and speedy trial; (2) affidavit of notice of alleged defendant Ronald L. Harris objection to states unnecessary delay (sic); and (3) a January 9, 2018 motion for dismissal, all of which he filed, pro se, in the underlying case, *State v. Harris*, Cuyahoga C.P. No. CR-17-620794-A. On March 9, 2018, the respondent moved for summary judgment on the grounds of lack of duty and procedural defects. Harris did not file a response. For the following reasons, this court grants the respondent's motion for summary judgment and denies the application for a writ of mandamus.

{¶2} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the

requested relief, and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerningham v. Gaughan*, 8th Dist. Cuyahoga No. 67787, 1994 Ohio App. LEXIS 6227 (Sept. 26, 1994). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977).

{¶3} Under Ohio law, hybrid representation — a criminal defendant may represent himself while also being represented by counsel — is prohibited. *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227 and *State v. Pizzaro*, 8th Dist. Cuyahoga No. 94849, 2011-Ohio-611. A review of the docket in the underlying case shows that Harris is represented by an attorney. Therefore, his motions are not properly before the court, and the respondent has no duty to rule on them. *Chambers v. Gaul*, 8th Dist. Cuyahoga No. 105229, 2017-Ohio-2765.

{¶4} Relator also did not comply with R.C. 2969.25(C), which requires that an inmate file an affidavit of poverty and a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. This also is sufficient reason to deny the mandamus, deny indigency status, and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842; *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724

N.E.2d 420; and *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378 — the defect may not be cured by subsequent filings.

{¶5} Harris’s petition is defective because it is improperly captioned. He styled this petition as “*State of Ohio v. Ronald L. Harris, Sr.*” R.C. 2731.04 requires that an application for a writ of mandamus “must be by petition, in the name of the state on the relation of the person applying.” This failure to properly caption a mandamus action is sufficient grounds for denying the writ and dismissing the petition. *Maloney v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 181 N.E.2d 270 (1962).

{¶6} Moreover, relator’s pleading is deficient because he styled it as a motion for mandamus. In *State ex rel. Simms v. Sutula*, 81 Ohio St.3d 110, 111, 689 N.E.2d 564 (1998), the Supreme Court of Ohio affirmed the court of appeals’ dismissal of a writ action by holding: “original actions for extraordinary relief, *e.g.*, a writ of procedendo, must be commenced by filing a complaint or petition rather than a motion.”

{¶7} Accordingly, this court grants the respondent’s motion for summary judgment and denies the application for a writ of mandamus. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶8} Writ denied.

ANITA LASTER MAYS, JUDGE

SEAN C. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR

