

[Cite as *State ex rel. Gray v. Calabrese*, 2018-Ohio-4412.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107487

STATE OF OHIO, EX REL.
ARCHIE GRAY

RELATOR

vs.

DEENA CALABRESE, JUDGE

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 521405
Order No. 521782

RELEASE DATE: October 26, 2018

FOR RELATOR

Archie Gray, pro se
Inmate No. A210-850
Grafton Correctional Institution
2500 South Avon-Belden Road
Grafton, Ohio 44044

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, P.J.:

{¶1} Archie Gray has filed a complaint for a writ of mandamus. Gray seeks an order that requires Judge Deena R. Calabrese to render a ruling with regard to a “motion to correct a contrary to law and void sentence” filed on December 8, 2017, in *State v. Gray*, Cuyahoga C.P. No. CR-89-236255-B. For the following reasons, we deny Gray’s request for a writ of mandamus and grant the motion for summary judgment filed by Judge Calabrese.

{¶2} Initially, we find that the complaint is defective because Gray has failed to comply with R.C. 2969.25(A). Pursuant to R.C. 2969.25(A), an inmate that commences a civil action against a government entity or employee must file a sworn affidavit that contains a description of each civil action or appeal of a civil action filed in the previous five years in any state or federal court. Gray has failed to provide this court with a notarized affidavit that describes previously

filed civil actions. *Freed v. Bova*, 8th Dist. Cuyahoga No. 99908, 2013-Ohio-4378; *Turner v. Russo*, 8th Dist. Cuyahoga No. 87852, 2006-Ohio-4490.

{¶3} Finally, attached to the motion for summary judgment is a copy of a judgment entry, journalized on September 20, 2018, that demonstrates Gray’s motion to correct a void sentence was denied. Thus, Gray’s request for a writ of mandamus is moot. “[R]elief is unwarranted because mandamus * * * will not compel the performance of a duty that has already been performed.” *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49, ¶ 4. Also, mandamus may not be employed to control judicial discretion and compel the trial court judge to grant a motion to correct a void sentence. *Thompson v. State*, 8th Dist. Cuyahoga No. 99265, 2013-Ohio-1907.

{¶4} Accordingly, we grant the motion for summary judgment. Costs waived. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of its entry upon the journal as required by Civ.R. 58(B).

{¶5} Writ denied.

MARY EILEEN KILBANE, PRESIDING JUDGE _____

PATRICIA ANN BLACKMON, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR