

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CHARLES LUCAS,	:	
Relator,	:	
v.	:	No. 108082
DANIEL GAUL, ET AL.,	:	
Respondents.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED

DATED: June 14, 2019

Writ of Mandamus
Motion No. 5288376
Order No. 526340

Appearances:

Charles Lucas, *pro se*.

Michael C. O'Malley, Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, *for respondents*.

EILEEN T. GALLAGHER, P.J.:

{¶ 1} Charles Lucas has filed a complaint for a writ of mandamus. Lucas seeks an order from this court that requires Judge Daniel Gaul to issue rulings with regard to the following motions that were docketed in *State v. Lucas*, Cuyahoga C.P.

No. CR-15-16-609934: 1) motion to vacate judgment, filed September 13, 2018; ; 2) supplemental motion in support of motion to dismiss, filed September 18, 2018; 3) motion to dismiss, filed September 24, 2018; 4) motion to deny the pronouncement of judgment, filed September 26, 2018; 5) motion to dismiss, filed October 5, 2018; 6) motion for new trial, filed November 7, 2018; 7) motion for new trial, filed November 13, 2018; 8) motion to redress, filed November 20, 2018; 9) motion to dismiss, filed November 26, 2018; 10) motion to recuse/disqualify, filed December 11, 2018; 11) motion for arrest of judgment, filed December 31, 2018; and 12) petitions for postconviction relief filed on June 7, 2018, June 8, 2018, and December 14, 2018. Judge Gaul has filed a motion for summary judgment which is granted for the following reasons.

{¶ 2} Attached to Judge Gaul's certification of the status of Lucas's pending motions, filed May 2, 2019, are copies of journal entries, journalized April 19, 2019, and May 2, 2019, that denied Lucas's various motions and petitions for postconviction relief. Relief is unwarranted because mandamus will not compel the performance of a duty that has already been performed. *State ex rel. Williams v. Croce*, 153 Ohio St.3d 348, 2018-Ohio-2703, 106 N.E.3d 55; *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49; *State ex rel. Fontanella v. Kontos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220. Herein, the request for relief is moot.

{¶ 3} In addition, a review of the docket in CR-16-609934, demonstrates that Lucas was sentenced on April 15, 2019. Any pending motions, upon sentencing,

are deemed denied. *State ex rel. Harris v. Sutula*, 8th Dist. Cuyahoga No. 107662, 2018-Ohio-5045; *State v. Duncan*, 8th Dist. Cuyahoga No. 97208, 2012-Ohio-3683.

{¶ 4} Lucas=s complaint is also procedurally defective because he has failed to comply with R.C. 2969.25(A) and (C). 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. *State ex rel. McGrath v. McDonnell*, 126 Ohio St.3d 511, 2010-Ohio-4726, 935 N.E.2d 830. R.C. 2969.25(C)(1) requires that Lucas file a statement setting forth his inmate account balance for each of the preceding six months as certified by the institutional cashier. Lucas has failed to provide this court with a notarized affidavit that describes previously filed civil actions and a certified statement setting forth the balance in his inmate account. *Freed v. Bova*, 8th Dist. Cuyahoga No. 99908, 2013-Ohio-4378; *Turner v. Russo*, 8th Dist. Cuyahoga No. 87852, 2006-Ohio-4490.

{¶ 5} We also find that Lucas=s complaint is defective because it is improperly captioned. Lucas styled this action as *Charles Lucas v. Judge Daniel Gaul, et al.* Pursuant to R.C. 2731.04, a complaint for a writ of mandamus must be brought in the name of the state on relation of the person applying and cannot be captioned as a motion. *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766; *State ex rel. Simms v. Sutula*, 81 Ohio St.3d 110, 689 N.E.2d 564 (1998); *Maloney v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 181 N.E.2d 270 (1962).

{¶ 6} Finally, Lucas has also failed to comply with Civ.R. 10(A), which requires that the complaint must include the addresses of all parties. *Bandy v. Villanueva*, 8th Dist. Cuyahoga No. 96866, 2011-Ohio-4831.

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

{¶ 8} Writ denied.

EILEEN T. GALLAGHER, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
LARRY A. JONES, SR., J., CONCUR