

OPINIONS OF THE SUPREME COURT OF OHIO

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[The State ex rel.] Johnson, Appellant, v. Slaby, Prosecuting Attorney, Appellee.

[Cite as State ex rel. Johnson v. Slaby (1993), Ohio St.3d .]

Public records -- Custodian of public records has no duty under R.C. 149.43(B) to transmit copies of those records by mail. (No. 93-1048 -- Submitted August 16, 1993 -- Decided November 10, 1993.)

Appeal from the Court of Appeals for Summit County, No. 15965.

Appellant, Kenneth Johnson, filed a "petition" for a writ of mandamus in the court of appeals to compel appellee, Lynn C. Slaby, Summit County Prosecuting Attorney, to supply him with certain photographs taken in a criminal case. Appellee filed a motion to dismiss, alleging that appellant had no clear legal right to receive the records, and that the photographs were "viewable by Petitioner's counsel at the Ninth District Court of Appeals." The court of appeals granted the motion to dismiss, citing State ex rel. Nelson v. Fuerst (1993), 66 Ohio St.3d 47, 607 N.E.2d 836, and State ex rel. Fenley v. Ohio Historical Soc. (1992), 64 Ohio St.3d 509, 597 N.E.2d 120. Those cases held that a public agency has no duty to mail public records.

The cause is before the court upon an appeal as of right.

Kenneth Johnson, pro se.

Lynn C. Slaby, Summit County Prosecuting Attorney, and Philip D. Bogdanoff, Assistant Prosecuting Attorney, for appellee.

Per Curiam. The decision of the court of appeals is affirmed based on Nelson and Fenley, supra.

Judgment affirmed.

Moyer, C.J., A.W. Sweeney, Douglas, Wright, Resnick and F.E. Sweeney, JJ., concur.

Pfeifer, J., dissents.

Pfeifer, J., dissenting. Johnson never sought to

require the prosecutor to mail him the photographs in question. He only sought to have copies of the photographs be made available to his agent. Thus, the majority's reliance on State ex rel. Nelson v. Fuerst (1993), 66 Ohio St.3d 47, 607 N.E.2d 836, and State ex rel. Fenley v. Ohio Historical Soc. (1992), 64 Ohio St.3d 509, 597 N.E.2d 120, which concern the duty to mail public records, is misplaced.

The real issue is whether Johnson should have access to the photographs. For the reasons stated in my dissent in State ex. rel. Lawhorn v. White (1993), 67 Ohio St.3d 158, 159, 616 N.E.2d 888, 889, I would require the prosecutor to make available to Johnson copies of all the requested photographs.