

**THE STATE EX REL. HOGAN, APPELLANT, v. GHEE, CHAIRPERSON, OHIO ADULT
PAROLE AUTHORITY, APPELLEE.**

[Cite as *State ex rel. Hogan v. Ghee*, 1999-Ohio-445.]

*Mandamus to compel Chairperson of Ohio Adult Parole Authority either to release
relator from prison on parole or provide him with a new parole release
hearing—Complaint dismissed, when.*

(No. 98-2096—Submitted February 9, 1999—Decided March 31, 1999.)

APPEAL from the Court of Appeals for Franklin County, No. 98AP-595.

{¶ 1} In 1998, appellant, Robert Hogan, an inmate at North Central Correctional Institution in Marion, Ohio, filed a complaint in the Court of Appeals for Franklin County for a writ of mandamus against appellee, Margarette T. Ghee, Chairperson of the Ohio Adult Parole Authority (“APA”). According to Hogan, at the time he filed the complaint, he had served approximately seven years of an aggregate prison term of three-to-fifteen years for convictions of burglary, theft, and drug abuse. Hogan claimed that at a 1996 parole hearing, the APA mentioned his pending lawsuit against two correctional officers and his prison warden and then denied his parole. Although his complaint is not entirely clear, Hogan apparently requested a writ of mandamus to compel Ghee either to release him from prison on parole or provide him with a new parole release hearing.

{¶ 2} Hogan subsequently moved for a declaratory judgment in the case. In his motion, Hogan asserted that Ghee and the APA’s alleged unlawful retaliation and discrimination against him by denying parole was cognizable as a federal civil rights action under Section 1983, Title 42, U.S.Code. Ghee filed a Civ.R. 12(B)(6) motion to dismiss Hogan’s complaint for failure to state a claim upon which relief can be granted.

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{¶ 3} The court of appeals granted Ghee’s motion and dismissed Hogan’s mandamus action. The court of appeals also denied Hogan’s motion for a declaratory judgment.

{¶ 4} This cause is now before the court upon an appeal as of right.

Robert Hogan, pro se.

Betty D. Montgomery, Attorney General, and Kevin V. Simon, Assistant Attorney General, for appellee.

Per Curiam.

{¶ 5} Hogan asserts in his propositions of law that the court of appeals erred in dismissing his mandamus action and denying his motion for declaratory judgment. For the following reasons, Hogan’s assertions lack merit.

{¶ 6} First, to the extent that Hogan claimed that he was entitled to be released from prison, habeas corpus, rather than mandamus, was the proper action. *State ex rel. Johnson v. Bettman* (1998), 84 Ohio St.3d 61, 701 N.E.2d 994, 995.

{¶ 7} Second, “ ‘[t]here is no constitutional or inherent right * * * to be conditionally released before the expiration of a valid sentence.’ ” *State ex rel. Hattie v. Goldhardt* (1994), 69 Ohio St.3d 123, 125, 630 N.E.2d 696, 698, quoting *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex* (1979), 442 U.S. 1, 7, 99 S.Ct. 2100, 2104, 60 L.Ed.2d 668, 675. Hogan consequently had no right to be released before the expiration of his sentence.

{¶ 8} Third, Hogan has an adequate legal remedy by filing a Section 1983 federal civil rights action in either federal district court or state common pleas court to raise his claim that Ghee and the APA denied his parole in retaliation for his litigation against prison officials. See *State ex rel. Zimmerman v. Tompkins* (1996), 75 Ohio St.3d 447, 449-450, 663 N.E.2d 639, 642; *State ex rel. Peebles v. Anderson* (1995), 73 Ohio St.3d 559, 560-561, 653 N.E.2d 371, 373; see, also, *Johnson v.*

Rodriguez (C.A.5, 1997), 110 F.3d 299. Here, Hogan essentially conceded that Section 1983 provided an adequate legal remedy for his claims. Cf. *Hattie v. Anderson* (1994), 68 Ohio St.3d 232, 626 N.E.2d 67.

{¶ 9} Finally, the court of appeals lacked jurisdiction over Hogan's declaratory judgment motion. *Wright v. Ghee* (1996), 74 Ohio St.3d 465, 466, 659 N.E.2d 1261, 1262; *State ex rel. Natl. Electrical Contractors Assn. v. Ohio Bur. of Emp. Serv.* (1998), 83 Ohio St.3d 179, 180-181, 699 N.E.2d 64, 66; Section 3(B)(1), Article IV, Ohio Constitution.

{¶ 10} Based on the foregoing, the court of appeals properly dismissed Hogan's mandamus action. Accordingly, we affirm the judgment of the court of appeals.

Judgment affirmed.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and
LUNDBERG STRATTON, JJ., concur.
