

THE STATE EX REL. WARREN, APPELLANT, v. WARNER, COURT ADMINISTRATOR, ET  
AL., APPELLEES.

[Cite as *State ex rel. Warren v. Warner* (1999), \_\_\_ Ohio St.3d \_\_\_\_.]

*Public records — Mandamus to compel court administrator and clerk of courts to  
provide relator transcripts and documents from his criminal proceedings —  
Complaint dismissed, when.*

(No. 98-1705 — Submitted December 15, 1998 — Decided February 10, 1999.)

APPEAL from the Court of Appeals for Stark County, No. 98-CA-00195.

In 1995, the Stark County Court of Common Pleas convicted appellant, Frank Warren, of kidnapping and sentenced him to prison. On appeal, the court of appeals affirmed Warren's conviction and sentence.

In 1997, the common pleas court denied Warren's motion for transcripts and documents from his criminal proceedings. The court found that Warren had already received the requested records in his direct appeal from his conviction. In 1998, Warren requested appellee Marc Warner, the court administrator of the common pleas court, to transmit copies of certain records to him pursuant to the federal Freedom of Information Act ("FOIA"). Warner requested, among other things, copies of the audiotapes and transcripts of the September 20 and October 30, 1995 proceedings in his criminal case. Warren had already received a transcript of the September 20 proceedings. Some of the other requested records could not be found or did not exist. The court administrator denied Warren's requests.

In July 1998, Warren filed a complaint in the Court of Appeals for Stark County for a writ of mandamus to compel appellees, the court administrator and the Stark County Clerk of Courts, to provide access to the requested records under

Ohio's Public Records Act, R.C. 149.43. The court of appeals *sua sponte* dismissed Warren's complaint.

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

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*Frank Warren, pro se.*

*Robert D. Horowitz*, Stark County Prosecuting Attorney, and *Scott R. Peipho*, Assistant Prosecuting Attorney, for appellees.

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***Per Curiam.*** Warren asserts that the court of appeals erred in dismissing his mandamus action. For the following reasons, however, we find Warren's claims to be meritless.

First, Warren erroneously based his written records requests to appellees on the FOIA. The FOIA does not apply to state agencies or officers. *State ex rel. Findlay Publishing Co. v. Schroeder* (1996), 76 Ohio St.3d 580, 582, 669 N.E.2d 835, 838; Sections 551(1) and 552(f), Title 5, U.S.Code.

Second, to the extent that Warren had already been provided some of the requested records, his mandamus claim was moot. *State ex rel. Thomson v. Doneghy* (1997), 80 Ohio St.3d 222, 685 N.E.2d 537; cf., also, *State ex rel. Grove v. Nadel* (1998), 81 Ohio St.3d 325, 326, 691 N.E.2d 275, 276, noting that "[o]nly one copy of [a] transcript of [a] criminal trial need be provided to an indigent criminal defendant."

Third, appellees had no duty under R.C. 149.43 to create documents to meet Warren's demands. *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff's Dept.* (1998), 82 Ohio St.3d 37, 42, 693 N.E.2d 789, 793; *State ex rel. Fant v. Mengel* (1991), 62 Ohio St.3d 197, 198, 580 N.E.2d 1085, 1086.

Finally, appellees had no duty to transmit copies of the requested records by mail to Warren. *State ex rel. Mayes v. Holman* (1996), 76 Ohio St.3d 147, 149, 666 N.E.2d 1132, 1134.

Based on the foregoing, the court of appeals properly dismissed Warren'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.