

**THE STATE EX REL. WHITTENBERGER, APPELLANT, v. CLARKE, CLERK OF
COURTS, TUSCARAWAS COUNTY, APPELLEE.**

[Cite as *State ex rel. Whittenberger v. Clarke*, 2000-Ohio-136.]

*Mandamus sought to compel Tuscarawas County Clerk of Courts to refund costs
relator paid for filing his motion to dismiss the assessment of court costs
arising from a cancelled sexual offender classification hearing—Court of
appeals' dismissal of complaint affirmed.*

(No. 99-2267—Submitted April 25, 2000—Decided June 21, 2000.)

APPEAL from the Court of Appeals for Tuscarawas County, No. 99AP110063.

{¶ 1} In 1989, appellant, Roy Whittenberger, was convicted of rape and corruption of a minor and sentenced to an aggregate prison term of seven to twenty-five years. After a sexual offender classification hearing was canceled in 1998, the Tuscarawas County Court of Common Pleas assessed Whittenberger certain court costs related to the proceeding. In December 1998, Whittenberger filed a motion to dismiss the assessment of court costs arising from the canceled hearing. The common pleas court then assessed Whittenberger a fifty-five dollar filing fee for his motion to dismiss. On March 24, 1999, the common pleas court entered a judgment on Whittenberger's dismissal motion. The common pleas court removed seven dollars of the costs previously assessed against Whittenberger relating to the classification hearing and ordered him to "pay all other costs and fees associated with this case which have been billed to him."

{¶ 2} Instead of appealing the common pleas court's March 24, 1999 judgment, in November 1999, Whittenberger filed a complaint in the Court of Appeals for Tuscarawas County for a writ of mandamus to compel appellee, Tuscarawas County Clerk of Courts Rockne W. Clarke, to refund the fifty-five

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dollars in costs Whittenberger had paid for filing his dismissal motion. The court of appeals *sua sponte* dismissed Whittenberger's complaint.

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

Roy Whittenberger, pro se.

Amanda Spies Bornhorst, Tuscarawas County Prosecuting Attorney, and
Scott J. Mastin, Assistant Prosecuting Attorney, for appellee.

Per Curiam.

{¶ 4} We affirm the judgment of the court of appeals. A writ of mandamus will not be issued when there is a plain and adequate remedy in the ordinary course of the law. R.C. 2731.05; *State ex rel. Natl. Electrical Contractors Assn., Ohio Conference v. Ohio Bur. of Emp. Serv.* (1998), 83 Ohio St.3d 179, 183, 699 N.E.2d 64, 67. As the court of appeals held, Whittenberger had an adequate remedy by appeal to challenge the common pleas court's imposition of court costs.

Judgment affirmed.

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