

[Cite as *State ex rel. Smith v. Sheward*, 2012-Ohio-4734.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State of Ohio ex rel.] General Smith, III,	:	
Relator,	:	
v.	:	Nos. 12AP-210
	:	and 12AP-211
Richard Sheward, Judge	:	
Franklin County Court of Common Pleas,	:	(REGULAR CALENDAR)
Respondent.	:	
	:	

D E C I S I O N

Rendered on October 11, 2012

General Smith, III, pro se.

Ron O'Brien, Prosecuting Attorney, and Jeremy David Smith, for respondent.

IN PROHIBITION/MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

SADLER, J.

{¶1} Relator, General Smith, III, an inmate incarcerated at Noble Correctional Institution, commenced this original action requesting this court to issue writs of prohibition and mandamus ordering respondent, The Honorable Richard Sheward of the Franklin County Court of Common Pleas, to refrain from taking certain action and ordering respondent to take certain action in relation to his sentence in relator's underlying criminal cases.

{¶2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth Appellate District, this matter was referred to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate determined that at the time

relator filed his complaint he failed to file a proper affidavit of indigency which included a certified copy of a cashier's statement, as required by R.C. 2969.25(C). As compliance with the provisions of R.C. 2969.25 is mandatory, the magistrate recommended this court sua sponte dismiss the complaint.

{¶3} Relator objects to the magistrate's finding that he did not comply with R.C. 2969.25(C)(1) and states simply that he did fully comply with the statute. The remainder of relator's memorandum in support of his objections addresses the merits of his case and attaches a blank Department of Rehabilitation and Correction form which contains both a section to be completed by the institution's cashier to reflect the status of the inmate's account balance and other relevant information, as well as a section entitled "Affidavit of Indigency."

{¶4} Having conducted an independent review of the record in this matter, we find no proper affidavit of indigency in the files which comply with R.C. 2969.25(C). Finding no error of law or other defect in the magistrate's decision, we overrule relator's objections and adopt the magistrate's decision as our own, including the findings of fact and conclusions of law therein. In accordance with the magistrate's decision, relator's petition for writs of prohibition and mandamus are sua sponte dismissed.

*Objections overruled;
petition for writs of prohibition and mandamus dismissed.*

KLATT and FRENCH, JJ., concur.

APPENDIX
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

[State ex rel.] General Smith,	:	
	:	
Relator,	:	Nos. 12AP-210
	:	and 12AP-211
v.	:	
	:	(REGULAR CALENDAR)
Richard Sheward, Judge Franklin County	:	
Court of Common Pleas,	:	
	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on April 16, 2012

General Smith, pro se.

Ron O'Brien, Prosecuting Attorney, and Jeremy David Smith,
for respondent.

IN PROHIBITION/MANDAMUS
ON SUA SPONTE DISMISSAL

{¶ 5} Relator, General Smith, has filed these original actions asking this court to grant writs of prohibition and mandamus ordering respondent, the Honorable Richard Sheward, judge of the Franklin County Court of Common Pleas, to refrain from taking certain action and ordering respondent to take certain action in his underlying criminal case concerning his sentence.

Findings of Fact:

{¶ 6} 1. Relator is an inmate currently incarcerated at Noble Correctional Institution.

{¶ 7} 2. On March 12, 2012, relator filed these original actions to compel respondent to take certain action with regard to resentencing him in his underlying criminal case.

{¶ 8} 3. At the time relator filed these actions, he did not file a proper affidavit of indigency attaching thereto a certified copy of the cashier's statement as required by R.C. 2969.25(C).

Conclusions of Law:

{¶ 9} The magistrate recommends that these actions be dismissed because relator has failed to comply with the requirements of R.C. 2969.25(C).

{¶ 10} In *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, the Supreme Court of Ohio affirmed the judgment of the court of appeals from Medina County which had dismissed the complaint of George D. Pamer, an inmate at Mansfield Correctional Institution, for his failure to comply with the requirements of R.C. 2969.25(C). Specifically, the Supreme Court stated:

Pamer's cashier statement did not set forth the account balance for the month immediately preceding his mandamus complaint--August 2005. See R.C. 2969.25(C)(1), which requires an inmate filing a civil action against a government employee seeking waiver of prepayment of court filing fees to file a "statement that sets forth the balance in the inmate account for each of the preceding six months, as certified by the institutional cashier." Pamer's failure to comply with R.C. 2969.25(C)(1) warranted dismissal of the complaint. *State ex rel. Foster v. Belmont Cty. Court of Common Pleas*, 107 Ohio St.3d 195, 2005-Ohio-6184, 837 N.E.2d 777, ¶ 5.

In addition, nothing in R.C. 2969.25 required the court of appeals to afford Pamer the opportunity to pay the requisite filing fee before dismissing the case when Pamer expressly requested waiver of prepayment of those fees.

Finally, because Pamer did not prevail and did not establish his indigency, the court of appeals did not abuse its discretion in ordering him to pay the costs of the proceeding. See *State*

ex rel. Frailey v. Wolfe (2001), 92 Ohio St.3d 320, 321, 750 N.E.2d 164; Civ.R. 54(D).

Id. at ¶ 5-7.

{¶ 11} Likewise, in *State ex rel. Ridenour v. Brunzman*, 117 Ohio St.3d 260, 2008-Ohio-854, the Supreme Court of Ohio affirmed the judgment of the Ross County Court of Appeals which had dismissed the complaint filed by William L. Ridenour because of his failure to comply with R.C. 2969.25(C). In that case, Ridenour had filed a motion for reconsideration attaching a statement setting forth his inmate account balance for the six month preceding the filing of his complaint; however, the statement was not certified by the prison cashier.

{¶ 12} In affirming the judgment of the appellate court, the Supreme Court stated:

"The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal." *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5. Ridenour failed to comply with R.C. 2969.25(C)(1), which requires an inmate filing a civil action against a government employee seeking waiver of prepayment of court filing fees to file with the complaint a "statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier."

Moreover, although Ridenour claims that the court erred in failing to grant him leave to amend his complaint to comply with R.C. 2969.25(C)(1), he never filed a motion to amend his complaint. Instead, he filed a motion for reconsideration, which was "a nullity because his mandamus action was filed originally in the court of appeals, rendering App.R. 26(A) inapplicable." *State ex rel. Washington v. Crush*, 106 Ohio St.3d 60, 2005-Ohio-3675, 831 N.E.2d 432, ¶ 5.

Id. at ¶ 6.

{¶ 13} Pursuant to the above-cited authority and because relator cannot cure these deficiencies at a later date, it is this magistrate's decision that this court should dismiss his complaints.

/s/ Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).