

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Irvin Neal, Jr.,	:	
Relator,	:	
v.	:	No. 14AP-827
The Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on March 31, 2015

Irvin Neal, Jr., pro se.

Michael DeWine, Attorney General, and Gene D. Park, for respondent.

IN MANDAMUS
ON MOTIONS

TYACK, J.

{¶ 1} Irvin Neal, Jr., filed this action in mandamus seeking a writ to compel the Ohio Adult Parole Authority ("APA") to grant him 33 days of jail-time credit.

{¶ 2} In accord with Loc.R. 13(M) of the Tenth District Court of Appeals, the case was referred to a magistrate to conduct appropriate proceedings. Counsel for the APA has filed a motion asking that we dismiss the case because Neal failed to comply with R.C. 2969.25 which sets stringent standards for inmates who file lawsuits.

{¶ 3} Neal does not deny that he failed to follow R.C. 2969.25. Instead, he has asked that he now be permitted to provide the necessary documentation and has filed a motion requesting leave to do so.

{¶ 4} The assigned magistrate has issued a magistrate's decision, appended hereto, which addresses both motions. The magistrate's decision includes a recommendation that we dismiss the case.

{¶ 5} No party has filed objections to the magistrate's decision. We now review the findings of fact and conclusions of law in that document.

{¶ 6} Compliance with R.C. 2969.25 is mandatory for an inmate filing a lawsuit. The Supreme Court of Ohio has ruled that the compliance must occur when the lawsuit is filed and the documents required by R.C. 2969.25 cannot be added later.

{¶ 7} We therefore adopt the findings of fact and conclusions of law in the magistrate's decision. As a result, we dismiss the case.

Case dismissed.

BROWN, P.J., and SADLER, J., concur.

A P P E N D I X

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Respondent.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on December 23, 2014

Irvin Neal, Jr., pro se.

Michael DeWine, Attorney General, and Gene D. Park, for respondent.

**IN MANDAMUS ON RESPONDENT'S MOTION TO DISMISS
AND RELATOR'S MOTION TO AMEND**

{¶ 8} Relator, Irvin Neal, Jr., has filed this original action requesting that this court issue a writ of mandamus ordering respondent, the Ohio Adult Parole Authority ("OAPA"), to properly calculate his jail time credit to include an additional 33 days of credit.

Findings of Fact:

{¶ 9} 1. Relator is an inmate currently incarcerated at Franklin Medical Center.

{¶ 10} 2. On October 17, 2014, relator filed this mandamus action asking this court to order the OAPA to credit him with 33 days of jail time credit.

{¶ 11} 3. At the time he filed this mandamus action, relator did not file the affidavit required by R.C. 2969.25(A) requiring that he list any prior civil actions or appeals that he may have filed nor did relator file a statement of the amount in his inmate account for the preceding six months, as certified by the institutional cashier pursuant to R.C. 2969.25(C).

{¶ 12} 4. On November 19, 2014, respondent filed a motion to dismiss on grounds that relator had failed to comply with the requirements of R.C. 2969.25.

{¶ 13} 5. On December 12, 2014, relator filed a motion seeking to amend his complaint to comply with the requirements of both R.C. 2969.25(A) and (C).

{¶ 14} 6. The matter is currently before the magistrate.

Conclusions of Law:

{¶ 15} For the reasons that follow, it is this magistrate's decision that this court should grant respondent's motion and dismiss relator's case.

{¶ 16} In regard to filing fees, R.C. 2969.25(C) and 2969.22 distinguish between paying the full amount of filing fees upon filing (referred to as "prepayment" of fees) and paying the fees pursuant to periodic deductions from the inmate's account maintained by the prison.¹ Under R.C. 2969.25(C), an inmate who seeks waiver of prepayment on the grounds of indigency must file an affidavit that includes: (1) a statement of the amount in his inmate account for each of the preceding six months as certified by the institutional cashier; and (2) a statement of all other cash and things of value owned by the inmate.

{¶ 17} Compliance with the provisions of R.C. 2969.25 is mandatory and the failure to satisfy the statutory requirements is grounds for dismissal of the action. *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258 (1999); *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421 (1998); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285 (1997).

¹Under the statute, when the inmate has submitted the requisite affidavit of indigency, the clerk charges the inmate's account for funds in excess of ten dollars. Following that payment, all income in the inmate's account (excluding the \$10) is forwarded to the clerk each month until the fees are paid.

{¶ 18} In the present action, relator has not filed a cashiers statement which complies with the requirements of R.C. 2969.25(C). Because relator cannot cure these deficiencies at a later date, dismissal of the complaint is warranted.

{¶ 19} In response to respondent's motion to dismiss, relator has filed a motion seeking to amend his complaint to include a statement of the amount in his inmate account for the preceding six months, as certified by the institutional cashier. However, inasmuch as compliance with the provisions of R.C. 2969.25 is mandatory at the time the mandamus action is filed and relator cannot cure the defect, the magistrate finds that dismissal of the complaint is warranted.

{¶ 20} Based on the forgoing, the magistrate recommends that this court should deny relator's motion to amend his complaint and grant respondent's motion to dismiss this action.

/S/ MAGISTRATE
STEPHANIE BISCA

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).