

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel.	:	
Christopher A. McGlown, Sr.,	:	
	:	
Relator,	:	
	:	
v.	:	No. 14AP-478
	:	
Gary C. Mohr, Director,	:	(REGULAR CALENDAR)
Ohio Department of Rehabilitation	:	
and Correction et al.,	:	
	:	
Respondents.	:	
	:	

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D E C I S I O N

Rendered on April 23, 2015

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*Christopher A. McGlown, Sr., pro se.*

*Michael DeWine, Attorney General, and Gene D. Park, for respondents.*

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IN MANDAMUS  
ON OBJECTION TO THE MAGISTRATE'S DECISION

BRUNNER, J.

{¶ 1} Relator, Christopher A. McGlown, Sr., an inmate of the Allen Oakwood Correctional Institution, has filed this original action for a writ of mandamus against respondents Gary C. Mohr, director of the Ohio Department of Rehabilitation and Correction ("DRC"), and Melissa Adams, chief of the Bureau of Sentence Computation for DRC. The complaint seeks recalculation of relator's end of sentence date to include time served between October 27, 2007 and July 6, 2008 under R.C. 2967.191.

{¶ 2} Pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals, this court referred the matter to a magistrate who has issued a decision including findings of fact and conclusions of law, and is appended hereto.

{¶ 3} Respondents moved to dismiss the complaint for failure to state a claim upon which relief may be granted under Civ.R. 12(B)(6). The magistrate granted the motion for dismissal on the ground that relator's affidavit of prior civil actions, required by R.C. 2969.25(A) was incomplete. The affidavit must include "a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court." R.C. 2969.25(A). Relator omitted two appeals that he had filed within the previous five years.

{¶ 4} In *State v. McGlown*, 6th Dist. No. L-13-1033, 2014-Ohio-1139, relator unsuccessfully appealed the denial of his motion to modify his sentences on forgery and tampering with records convictions.

{¶ 5} Previously, he had appealed the denial of his motion to correct an "illegal sentence." The Sixth District affirmed the trial court's judgment in *State v. McGlown*, 6th Dist. No. L-12-1053, 2013-Ohio-1479.

{¶ 6} In his objection to the magistrate's decision, relator insists that these appeals were not of civil actions and, therefore, were not required by the statute to be included in the affidavit. The established law, however, is to the contrary. "A postconviction proceeding is not an appeal of a criminal conviction, but, rather, a collateral civil attack on the judgment." *State v. Steffen*, 70 Ohio St.3d 399, 410 (1994). *Accord State v. Reynolds*, 79 Ohio St.3d 158 (1997), syllabus ("Where a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21.").

{¶ 7} Relator further argues that the statute is directed at inmates, most of whom have a limited education and would not know what is included in the scope of "a civil action." "It is a fundamental legal principal that ignorance of the law is no excuse." *Joe & Mary's Inc. v. Ohio Liquor Control Comm.*, 10th Dist. No. 02AP-1173, 2003-Ohio-3643, ¶ 29. "To hold that those who know about such rules or regulations are bound and those who do not know are not bound would make for a most unjust administration of law." *Id.*, quoting *State ex rel. Bd. of Edn. of N. Canton Exempted Village School Dist. v. Holt*, 174 Ohio St. 55, 57 (1962).

{¶ 8} Relator's asserted lack of knowledge that his postconviction motions and subsequent appeals were civil proceedings does not mitigate his failure to include them as required in his affidavit. "The requirements of R.C. 2969.25 are mandatory and failure to comply with them requires dismissal of an inmate's complaint." *State ex rel. Hall v. Mohr*, 140 Ohio St.3d 297, 2014-Ohio-3735, ¶ 4. "[T]he affidavit required by R.C. 2969.25(A) must be filed at the time the complaint is filed, and an inmate may not cure the defect by later filings." *Id.*, citing *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, ¶ 9.

{¶ 9} Because the requirements of R.C. 2969.25(A) are mandatory, relator's omission of his appeals of the judgments denying his postconviction motions subjected his action to dismissal. The Supreme Court of Ohio has made it clear that neither R.C. 2969.25(A) nor (C) permits substantial compliance. *State ex rel. Manns v. Henson*, 119 Ohio St.3d 348, 2008-Ohio-4478, ¶ 4, citing *Martin v. Ghee*, 10th Dist. No. 01AP-1380 (Apr. 9, 2002).

{¶ 10} Under Civ.R. 53(D)(4)(d), we have undertaken an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. The magistrate's sixth finding of fact indicates that relator did not respond to respondents' motion to dismiss filed June 16, 2014. The record includes relator's response filed August 6, 2014, and respondents' August 12, 2014 reply, in which respondents withdrew the res judicata argument mentioned in the magistrate's fifth finding of fact. Notwithstanding the apparent untimeliness of relator's filed opposition, we have included all of relator's and respondents' submissions in our independent review. With the exceptions noted in this paragraph, we adopt the magistrate's findings of fact and conclusions of law.

{¶ 11} For the reasons stated above, we overrule relator's objection to the magistrate's decision and this action is hereby dismissed.

*Objection overruled;  
action dismissed.*

BROWN, P.J., and TYACK, J., concur.

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**APPENDIX**  
**IN THE COURT OF APPEALS OF OHIO**  
**TENTH APPELLATE DISTRICT**

State of Ohio ex rel.	:	
Christopher A. McGlown, Sr.,	:	
Relator,	:	
	:	
v.	:	No. 14AP-478
	:	
Gary C. Mohr, Director,	:	(REGULAR CALENDAR)
Ohio Department of Rehabilitation	:	
and Correction, and Melissa Adams,	:	
Chief, Bureau of Sentence Computation	:	
et al.,	:	
	:	
Respondents.		

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**MAGISTRATE'S DECISION**

Rendered on August 21, 2014

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*Christopher A. McGlown, Sr., pro se.*

*Michael DeWine, Attorney General, and Gene D. Park, for respondents.*

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**IN MANDAMUS**  
**ON RESPONDENTS' MOTION TO DISMISS**

{¶ 12} Relator, Christopher A. McGlown, Sr., has filed this original action requesting that this court issue a writ of mandamus ordering respondent Gary C. Mohr, Director of the Ohio Department of Rehabilitation and Correction ("ODRC") and Melissa Adams, Chief of the Ohio Bureau of Sentence Computation, a division of ODRC, to credit him with 368 days of jail-time credit.

**Findings of Fact:**

{¶ 13} 1. Relator is an inmate currently incarcerated at Allen Oakwood Correctional Institution.

{¶ 14} 2. On June 16, 2014, relator filed this complaint seeking a writ of mandamus ordering respondents to credit him with 368 days of jail-time credit.

{¶ 15} 3. With his complaint, relator filed the documentation required under R.C. 2969.25(C).

{¶ 16} 4. With his complaint, relator also filed a document purporting to be an R.C. 2969.25(A) affidavit wherein he lists eight actions/appeals allegedly filed within the past five years.

{¶ 17} 5. On July 16, 2014, respondents filed a motion to dismiss asserting that relator's affidavit of prior actions did not meet the requirements of R.C. 2969.25(A) and that his petition should also be dismissed on grounds of res judicata. Within the motion to dismiss, respondents listed two recent appellate court decisions which are not included in relator's prior actions affidavit.

{¶ 18} 6. Relator has not responded to respondents' motion to dismiss, and the matter is currently before the magistrate.

**Conclusions of Law:**

{¶ 19} It is this magistrate's decision that this court should grant respondents' motion to dismiss.

{¶ 20} A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545 (1992). In reviewing the complaint, the court must take all the material allegations as admitted and construe all reasonable inferences in favor of the nonmoving party. *Id.*

{¶ 21} In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that relator can prove no set of facts entitling him to recovery. *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242 (1975). As such, a complaint for writ of mandamus is not subject to dismissal under Civ.R. 12(B)(6) if the complaint alleges the existence of a legal duty by the respondent and the lack of an adequate remedy at law for relator with

sufficient particularity to put the respondent on notice of the substance of the claim being asserted against it, and it appears that relator might prove some set of facts entitling him to relief. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.*, 72 Ohio St.3d 94 (1995).

{¶ 22} For the following reasons, respondents' motion should be granted and relator's complaint should be dismissed.

{¶ 23} R.C. 2969.25(A) states as follows:

At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court. The affidavit shall include all of the following for each of those civil actions or appeals:

- (1) A brief description of the nature of the civil action or appeal;
- (2) The case name, case number, and the court in which the civil action or appeal was brought;
- (3) The name of each party to the civil action or appeal;
- (4) The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate's counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award.

{¶ 24} After performing a search on Westlaw, the magistrate confirmed that relator filed an incomplete R.C. 2969.25(A) affidavit that failed to describe the following two actions: *State v. McGlown*, 6th Dist. No. L-12-1053, 2013-Ohio-1479, and *State v. McGlown*, 6th Dist. No. L-13-1033, 2014-Ohio-1139. Further, as case law indicates, not only is the satisfaction of the R.C. 2969.25(A) filing requirement mandatory for the inmate, he cannot later amend the affidavit that is deficient as of the filing of the action.

{¶ 25} In *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, an inmate, Carlos J. Fuqua, filed a petition for a writ of habeas corpus in the Allen County Court of Appeals. He requested leave to proceed in forma pauperis, but did not file the affidavit required by R.C. 2969.25(A) describing each civil action or appeal of a civil action that he had filed in the previous five years in any state or federal court.

{¶ 26} Fuqua's prison warden moved to dismiss the petition.

{¶ 27} Fuqua requested leave in the Allen County Court of Appeals to amend the petition with the affidavit required by R.C. 2969.25(A).

{¶ 28} The Allen County Court of Appeals dismissed the petition for habeas corpus, and Fuqua appealed as of right to the Supreme Court of Ohio. The Supreme Court, in *Fuqua*, at ¶ 9, states:

Fuqua's belated attempt to file the required affidavit does not excuse his noncompliance. See R.C. 2969.25(A), which requires that the affidavit be filed "[a]t the time that an inmate commences a civil action or appeal against a government entity or employee." (Emphasis added.)

{¶ 29} In *Hawkins v. S. Ohio Correctional Facility*, 102 Ohio St.3d 299, 2004-Ohio-2893, an inmate, Jomo Hawkins, filed a petition for a writ of habeas corpus in the Scioto County Court of Appeals. However, Hawkins' petition did not contain the R.C. 2725.04 commitment papers, nor the affidavit required by R.C. 2969.25(A). Later, Hawkins filed an un-notarized statement purporting to be his R.C. 2969.25(A) affidavit.

{¶ 30} Following dismissal of his action, Hawkins appealed as of right to the Supreme Court of Ohio. Citing *Fuqua*, the *Hawkins* court affirmed the judgment of the Scioto County Court of Appeals.

{¶ 31} Here, relator failed to satisfy the requirement of R.C. 2969.25(A) as of the date of the filing of his complaint on June 16, 2014. Accordingly, it is the magistrate's decision that this court grant respondents' motion to dismiss.

/S/ MAGISTRATE  
STEPHANIE BISCA BROOKS

**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).