

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

The State ex rel. Edward Jackson,	:	
Relator,	:	
v.	:	No. 16AP-198
Ron O'Brien, Prosecutor,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on September 27, 2016

Edward Jackson, pro se.

Ron O'Brien, Prosecuting Attorney, Scott O. Sheets and Benjamin Humphrey, for respondent.

IN MANDAMUS
ON RESPONDENT'S MOTION TO DISMISS

KLATT, J.

{¶ 1} Relator, Edward Jackson, an inmate of the Lebanon Correctional Institution, commenced this original action in mandamus seeking an order compelling respondent, Ron O'Brien, the Franklin County Prosecuting Attorney, to reschedule a sentencing hearing and to obtain a warrant to convey relator to the rescheduled sentencing hearing. Respondent has filed a motion to dismiss based on relator's failure to comply with R.C. 2969.25(A).

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

relator's affidavit fails to satisfy the mandatory filing requirements of R.C. 2969.25(A). Therefore, the magistrate has recommended that we grant respondent's motion to dismiss.

{¶ 3} Relator did not file an objection to the magistrate's decision.

{¶ 4} Finding no error of law or other defect on the face of the magistrate's decision, we adopt the decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we grant respondent's motion to dismiss relator's complaint.

Motion to dismiss granted.

TYACK and HORTON, JJ., concur.

APPENDIX
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

The State ex rel. Edward Jackson,	:	
Relator,	:	
v.	:	No. 16AP-198
Ron O'Brien, Prosecutor et al.,	:	(REGULAR CALENDAR)
Respondent.	:	

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

Rendered on May 24, 2016

Edward Jackson, pro se.

Ron O'Brien, Prosecuting Attorney, Scott O. Sheets and Benjamin Humphrey, for respondent.

IN MANDAMUS
ON RESPONDENT'S MOTION TO DISMISS

{¶ 5} In this original action, relator, Edward Jackson, an inmate of the Lebanon Correctional Institution ("LCI"), requests that a writ of mandamus issue against respondent, Ron O'Brien, the Franklin County Prosecuting Attorney. Relator requests that the writ order respondent to reschedule a resentencing hearing and to obtain a warrant to convey relator to the rescheduled sentencing hearing.

Findings of Fact:

{¶ 6} 1. On March 18, 2016, relator, an LCI inmate, filed this original action against respondent. Relator requests that a writ of mandamus order respondent to reschedule a sentencing hearing and to obtain a warrant to convey him to the rescheduled sentencing hearing.

{¶ 7} 2. Relator has not deposited with the clerk of this court the monetary sum required as security for the payment of costs. *See* Loc.R. 13(B) of the Tenth District Court of Appeals.

{¶ 8} 3. With his complaint, relator filed a document captioned "Affidavit of Indigence," which relator executed on March 8, 2016. In the affidavit, relator requests that this court's filing fees be "waived."

{¶ 9} 4. With his complaint, relator filed a document captioned "Certificate," which was signed by the LCI institutional cashier on March 9, 2016. In the "Certificate," the institutional cashier certifies relator's "average monthly balance" during the past six months.

{¶ 10} 5. With his complaint, relator also filed a document captioned "Inmate Demand Statement." This document sets forth the transactions in relator's LCI account from September 6, 2015 through March 10, 2016.

{¶ 11} 6. With his complaint, relator filed an affidavit which purports to be compliant with R.C. 2969.25(A) regarding prior civil actions and/or appeals. The affidavit avers:

I, Edward Jackson, Relator, assert that the above sworn to civil actions consist of the following: (1) I filed a Petition for a Writ of Procedendo in the Court of Appeals, case No. 14AP000922. The magistrate recommended that the Writ be granted. (2) I filed a Motion To Impose A Valid Sentence, case No. 88Cr09-3371, in the Franklin County Court of Common Pleas. Judge Cain denied [sic] the Motion. (3) I filed a Petition [sic] for a Writ Of Mandamus, case No. 13-0086 in the Ohio Supreme Court. The Petition was voluntarily [sic] dismissed by the Relator. (4) I filed a Petition for a Writ Of Procedendo, case No. 13-0352 in the Ohio Supreme Court. The Petition was dismissed per the request of the Respondent due to filing error. (5) I filed a Petition for Habeas Corpus, case No. 2013-0988. The action was dismissed without opinion. (6) I filed a Petition for a Writ of mandamus, case No. 14-1431 in the Ohio Supreme Court. The Petition was dismissed due to filing error.

{¶ 12} 7. On April 19, 2016, respondent filed a motion to dismiss. In his memorandum in support, respondent points out:

Though Relator filed an affidavit regarding previous civil actions, it is deficient in a number of ways. Of the actions

listed, the affidavit does not contain the case names or the names of the parties to the civil actions. Finally, there is no statement in the affidavit regarding frivolousness or maliciousness. Most importantly, Relator has failed to list at least three previous civil actions. Relator filed case numbers 15 AP 005 and 15 AP 630 in this Court as well as case number 2014-1043 in the Ohio Supreme Court. Relator fails to mention any of these cases.

{¶ 13} 8. On April 21, 2016, the magistrate issued an order that relator shall file his written response and/or brief in opposition no later than May 10, 2016.

{¶ 14} 9. On April 29, 2016, relator filed his "Memorandum Contra Respondent's Motion To Dismiss." In his memorandum contra, relator does not deny respondent's assertion that he failed to mention in his affidavit at least three prior civil actions that he filed in this court and the Supreme Court of Ohio. In fact, this court can take notice that relator failed to mention in his affidavit at least three civil actions.

{¶ 15} 10. On May 3, 2016, respondent filed his reply.

Conclusions of Law:

{¶ 16} It is the magistrate's decision that this court grant respondent's motion to dismiss, as more fully explained below.

{¶ 17} R.C. 2969.25(A) provides:

(A) 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.

{¶ 18} Clearly, relator has failed to satisfy the mandatory filing requirements set forth at R.C. 2969.25(A).

{¶ 19} To begin, in his affidavit, five of the six actions listed were civil actions. (The motion he filed in case No. 88CR-3371 was not a civil action.)

{¶ 20} With respect to the five civil actions listed, relator presents the case number of the action and the court in which the action was filed. He also describes the outcome. However, relator fails to list the case name for each of the five civil actions. Relator also fails to name each party to the civil action or appeal.

{¶ 21} Moreover, it is clear that relator's affidavit fails to list at least three prior civil actions as pointed out by respondent in his motion to dismiss.

{¶ 22} Relator's failure to satisfy the mandatory filing requirements of R.C. 2969.25(A) requires this court to dismiss this action. *See State ex rel. Wolfe v. Ohio Adult Parole Auth.*, 10th Dist. No. 15AP-1118, 2016-Ohio-1554.

{¶ 23} Accordingly, for all the above reasons, it is the magistrate's decision that this court grant respondent's motion to dismiss.

/S/ MAGISTRATE
KENNETH W. MACKE

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).