

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

IN RE: JOSEPH A. SANDS,	:	PER CURIAM OPINION
Relator,	:	
- vs -	:	CASE NO. 2012-L-075
STATE OF OHIO,	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Joseph A. Sands, pro se, Manchester FCI, P.O. Box 4000, Manchester, KY 40962 (Relator).

Charles E. Coulson, Lake County Prosecutor, and *Michael L. DeLeone*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (Respondent).

PER CURIAM.

{¶1} Relator, Joseph A. Sands, seeks a writ of mandamus ordering Judge Vincent Culotta, Judge of the Lake County Court of Common Pleas, to provide him with specific court documents associated with his criminal case number 06CR000401. Mr. Sands is currently serving a federal prison sentence in Kentucky, and has also been sentenced to 20 years of imprisonment by the Lake County Court of Common Pleas. Because Mr. Sands fails to state a claim upon which relief can be granted, we dismiss the petition for a writ of mandamus.

Substantive Facts and Procedural History

{¶2} In June 2006, Mr. Sands was indicted on 14 counts of violating the Ohio Revised Code. His violations included two counts of Engaging in a Pattern of Corrupt Activity in violation of R.C. 2923.32(A)(1), four counts of Conspiracy to Commit Aggravated Murder in violation of 2923.01(A)(1), and eight counts of Conspiracy to Commit Aggravated Arson in violation of R.C. 2923.01(A)(1). In November 2006, a jury found Mr. Sands guilty of both counts of Engaging in a Pattern of Corrupt Activity, three counts of Conspiracy to Commit Aggravated Murder, and one count of Conspiracy to Commit Aggravated Arson. He was sentenced to a total of 20 years in prison, and then conveyed into federal custody to begin serving a previously ordered federal sentence.

{¶3} In February 2012, Mr. Sands sent a public records request to the Lake County Court of Common Pleas pursuant to the Freedom of Information Act, a federal statute. The Lake County Prosecuting Attorney Charles Coulson sent a response February 29, 2012, indicating that his request was made pursuant to a federal law that does not apply to state or local agencies or officers. Mr. Coulson informed Mr. Sands that even if the request was construed to be pursuant to Ohio's public records law, R.C. 149.43, he would still not be entitled to the records he requested because "[a] public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution

* * *

{¶4} In April 2012, Mr. Sands sent a second records request, seeking a certified copy of the judgment entry in case number 06CR000401. In March and May 2012, Mr. Sands sent a third and fourth records request, again seeking a certified copy

of the post-conviction judgment entry in his case. Citing *State ex rel. Barb v. Cuyahoga County Jury Commr.*, 124 Ohio St.3d 238, 2010-Ohio-120 and *State ex rel. Stephen B. Cohen v. Lynn L. Mazeika, Clerk of Court, Lake County, Ohio*, 11th Dist. No. 2004-L-048, 2004-Ohio-3340, Mr. Coulson, again, indicated that the court was under no legal obligation to furnish these documents to Mr. Sands absent a showing that a legal duty existed. Mr. Sands was cited R.C. 149.43(B)(8) as the statutory procedure he would need to follow. He would need to make an application to the Lake County Court of Common Pleas seeking an order recognizing the necessity of such a public records request. At no time did Mr. Sands request an order from the trial court pursuant to R.C. 149.43(B)(8) in order to properly pursue his records request.

{¶5} On July 2, 2012, Mr. Sands filed a petition for a writ of mandamus with this court seeking an order requiring the trial court to provide him with the documents he has been seeking. We issued an alternative writ on July 23, 2012, and respondent, the state of Ohio, filed a Motion to Dismiss and/or in the Alternative Motion for Summary Judgment. Mr. Sands failed to submit a substantive response to the state's motion. He stated that "[a]s the motion filed by the State of Ohio preempted the Court's July 23, 2012, order, the Relator will await the direction of the Court before filing a formal reply. * * * [U]nless, and until, the Court orders a formal reply from him he will not reply in kind to the motion recently filed by the Respondent." No further briefing has been filed.

Predicate for Mandamus

{¶6} "A mandamus is a civil proceeding, extraordinary in nature since it can only be maintained when there is no other adequate remedy to enforce clear legal rights." *State ex rel. Widmer v. Mohnhey*, 11th Dist. No. 2007-G-2776, 2008-Ohio-1028, ¶31, citing *State ex rel. Brammer v. Hayes*, 164 Ohio St. 373 (1955). "Mandamus is a

writ issued to a public officer to perform an act that the law enjoins as a duty resulting from his or her office.” *Id.*, citing R.C. 2731.01. For a writ of mandamus to issue, (1) the relator must establish a clear legal right to the relief prayed for; (2) the respondent must have a clear legal duty to perform the act; and (3) the relator must have no plain and adequate remedy in the ordinary course of the law. *Id.*

Preliminary Matters Warranting Dismissal

{¶7} The record in this action reflects that the petition was not filed in compliance with R.C. 2731.04, which governs the proper form for an application for a writ of mandamus. It states: “Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit.”

{¶8} This court has held that the requirement that the writ of mandamus be brought in the name of the state on the relation of the person applying for the writ is mandatory. *Ezzone v. Bruening*, 11th Dist. No. 96-L-105, 1996 Ohio App. LEXIS 5941, *9 (Dec. 31, 1996), citing *Ort v. Hutchinson*, 114 Ohio App. 251 (3d Dist.1961); *Maloney v. Court of Common Pleas*, 173 Ohio St. 226 (1962); *Alls v. McKay*, 11th Dist. No. 93-T-4956, 1993 Ohio App. LEXIS 5887 (Dec. 10, 1993). Mr. Sands did not conform his application to this statutory requirement and thus dismissal is warranted. Mr. Sands’ petition, however, also presents substantive deficiencies requiring dismissal.

The Motion to Dismiss is Well-Taken as There is an Adequate Remedy at Law

{¶9} “A motion to dismiss for failure to state a claim upon which relief can be granted is procedural in nature and tests the sufficiency of the complaint.” *Huffman v. Willoughby*, 11th Dist. No. 2007-L-040, 2007-Ohio-7120, ¶16, citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992). “[W]hen a

party files a motion to dismiss for failure to state a claim, all the factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the nonmoving party.” *Byrd v. Faber*, 57 Ohio St.3d 56, 60 (1991). “In order for a court to grant a motion to dismiss for failure to state a claim, it must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Huffman, supra*, at ¶18, quoting *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975).

{¶10} “Mandamus will not lie where there is an adequate remedy at law.” *State ex rel. Strauss v. Court of Common Pleas*, 11 Ohio St.3d 214, 215 (1984). To be entitled to a writ in this case, Mr. Sands must establish that he has no other adequate remedy at law he could seek to resolve the underlying dispute. Mr. Sands does have an adequate remedy, however, in that he may seek an order from the trial court pursuant to R.C. 149.43(B)(8) stating that the “the judge who imposed the sentence or made the adjudication with respect to [him], or the judge’s successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim * * *.”

{¶11} This remedy has been laid out to him by the state in their written responses to his records request, and, yet, Mr. Sands took no action other than filing an original action with this court. Therefore, the dispute underlying this mandamus action can and may be remedied through alternative means, and thus we do not find the petition well taken. Mr. Sands’ petition for a writ of mandamus is therefore dismissed.

DIANE V. GRENDALL, J., MARY JANE TRAPP, J., THOMAS R. WRIGHT, J., concur.