

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

STATE OF OHIO ex rel. MARQUET TRAWICK,	:	PER CURIAM OPINION
	:	
Relator,	:	CASE NO. 2012-T-0071
	:	
- VS -	:	
	:	
TRUMBULL CORRECTIONAL INSTITUTION, DEPARTMENT OF REHABILITATION AND CORRECTION, et al.,	:	
	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Marquet Trawick, pro se, PID# A563071, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430 (Relator).

Mike DeWine, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215, and *Stacy Hannan*, Assistant Attorney General, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM

{¶1} Before this court is relator, Marquet Trawick's, Petition for Writ of Mandamus. Respondent, Ohio Department of Rehabilitation and Correction, has filed a Motion to Dismiss, on the grounds that Trawick does not have a clear legal right to the relief prayed for; Trawick has a plain and adequate remedy at law; the Petition is not

properly verified by affidavit; and the Petition does not contain a properly notarized affidavit of prior civil actions. For the following reasons, Trawick's Petition is dismissed.

{¶2} On August 27, 2012, Trawick, a prisoner at the Trumbull Correctional Institution in Leavittsburg, Ohio, filed a Petition for Writ of Mandamus against "Trumbull Correctional Institution, Department of Rehabilitation and Correction, et al." In the body of the Petition, Trawick identified Warden Benny Kelly and Warden's Designee Robin Ware as Respondents.

{¶3} The incidents underlying Trawick's Petition for Writ of Mandamus are two Dispositions of the Rules Infraction Board.

{¶4} On March 16, 2012, in RIB Case No. TCI-12-001268, Trawick was found guilty of violating Rule 14 of the Inmate Rules of Conduct ("Seductive or obscene acts, including indecent exposure or masturbation"). Ohio Adm.Code 5120-9-06(C)(14). The following disposition was imposed: sixty day phone restriction; sixty day visit restriction; one year restriction on personal title items and electronics; and one year restriction on sundry items and packages. On the same day, Trawick filed a disciplinary appeal, complaining that the sanctions imposed were "disproportionate" to the conduct and "stringent in nature." On April 16, 2012, the disposition of the Rules Infraction Board was affirmed in the Warden's Decision on Appeal.

{¶5} On April 25, 2012, Trawick filed a Notification of Grievance, complaining that the Warden violated Ohio Administrative Code 5120-9-08(Q)(6), which provides: "The decision resulting from this review will be sent to the warden of the institution and the inmate in written form, within thirty days of receiving all the records unless there is good cause for delay." Trawick's Grievance was denied on May 3, 2012.

{¶6} Also on May 3, 2012, Trawick filed a Grievance Appeal to the Chief Inspector, who affirmed the denial of the Grievance on June 1, 2012.

{¶7} On May 7, 2012, in RIB Case No. TCI-12-002186, Trawick was again found guilty of violating Rule 14. For this infraction, Trawick received the following disposition: ten days disciplinary control; sixty day phone restriction; sixty day visit restriction; one year restriction on personal title items and electronics; and one year restriction on sundry items and packages. On May 9, 2012, Trawick filed an appeal with the warden's office, complaining that the evidence did not demonstrate a violation of Rule 14.

{¶8} On June 8, 2012, Trawick filed a Notification of Grievance, complaining that he had not received a decision on his appeal in RIB Case No. TCI-12-002186.

{¶9} On August 1, 2012, the Chief Inspector issued a Decision, denying Trawick's June 8 Grievance. The Chief Inspector found that "the warden affirmed the Rules Infraction Board's decision [in Case No. TCI-12-002186] on 5/18/2012."

{¶10} In his Petition for Mandamus, Trawick argues that the Respondent¹ had a clear legal duty, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the relevant provisions of the Ohio Administrative Code, to conduct a "fair" Fact Finding process" as part of the rules infraction procedures, to perform a "meaningful" review of the RIB Appeals and issue timely decisions, to give written notification of the evidence supporting the dispositions, to intervene to correct known patterns of procedural and prejudicial errors, and to grant Trawick the same "Equal Protection Rights" as other Level 3 Security Risk Inmates.

1. Whether Respondent refers to Trumbull Correctional Institution, the Department of Rehabilitation and Correction, Warden Kelly, or Warden's Designee Ware is not certain.

{¶11} Respondent, Ohio Department of Rehabilitation and Correction, seeks the dismissal of Trawick's Petition for "failure to state a claim upon which relief can be granted." Civ.R. 12(B)(6). Respondent argues that Trawick does not have a clear legal right to the relief prayed for, Trawick has a plain and adequate remedy at law, the Petition is not properly verified by affidavit, and Trawick failed to satisfy the statutory requirements for inmates to file civil actions.

{¶12} Dismissal of an original action is "appropriate if after presuming the truth of all material factual allegations of [relators'] petition and making all reasonable inferences in their favor, it appear[s] beyond doubt that they could prove no set of facts entitling them to the requested extraordinary relief * * *." (Citation omitted.) *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 14.

{¶13} "Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." R.C. 2731.01. "In order to be entitled to a writ of mandamus, relators must show (1) that they have a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relators have no plain and adequate remedy in the ordinary course of the law." *State ex rel. Natl. City Bank v. Bd. of Edn. of the Cleveland City School Dist.*, 52 Ohio St.2d 81, 83, 369 N.E.2d 1200 (1977).

{¶14} "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." R.C. 2969.25(A). "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.

{¶15} "An affidavit is a written declaration under oath." R.C. 2319.02. The Ohio Supreme Court has maintained, with "longstanding insistence," that "only a written declaration made under oath before a proper officer qualifies as an 'affidavit.'" *Toledo Bar Assn. v. Neller*, 102 Ohio St.3d 1234, 2004-Ohio-2895, 809 N.E.2d 1152, ¶ 24. "Notaries public are * * * the persons who most often administer the oaths that appear on affidavits." *Id.* at ¶ 11.

{¶16} Trawick's Affidavit of Prior Civil Action(s) is not notarized or otherwise under oath. Accordingly, the Petition must be dismissed. *White* at ¶ 2 (affirming dismissal of a mandamus petition "for failure to comply with the provisions set forth in R.C. 2969.25(A) and (C) relating to previously filed lawsuits"); *State ex rel. Easley v. Burke*, 10th Dist. No. 12AP-486, 2012-Ohio-4548, ¶ 7 and 11 (mandamus petition dismissed, sua sponte, for failure to comply with R.C. 2969.25 - an unnotarized document "is * * * not truly an affidavit"); *Savage v. Savage*, 11th Dist. Nos. 2004-L-024 and 2004-L-0040, 2004-Ohio-6341, ¶ 32, fn. 1 ("an unsworn statement * * * may not be considered as an affidavit").

{¶17} Additionally, we note that Trawick's Petition fails to state a clear legal right on his behalf and/or a clear legal duty on the Respondent's behalf. Trawick's arguments are derived from federal due process protections and state administrative regulations. The United States Supreme Court has held that an inmate's federally protected liberty interest in prison disciplinary proceedings "will be generally limited to

freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force * * *, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484, 115 S.Ct. 2293, 132 L.E.2d 418 (1995). The United States District Court for the Northern District of Ohio applied *Sandin* in its dismissal of Trawick’s Section 1983 action, holding that the “restrictions on attending programming, receiving packages, and electronic items for one year, and restricted visitation and telephone calls for 60 days” failed to raise claims under either procedural or substantive due process. *Trawick v. Kelly*, N.D. Ohio No. 4:12 CV 1714, 2012 U.S. Dist. LEXIS 158383, *7 and *10 (Nov. 5, 2012).

{¶18} The Ohio Supreme Court has similarly applied *Sandin* to dismiss a mandamus action based on alleged violations of the Ohio Administrative Code in the context of proceedings before the Rules Infraction Board. *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479, 683 N.E.2d 1139 (1997) (“[a]bsent evidence that the challenged institutional action would affect the inmate’s duration of confinement, an inmate has no liberty interest in being free of disciplinary or administrative segregation because such segregation does not impose an atypical and significant hardship on the inmate”).

{¶19} For the foregoing reasons, the Respondent, Ohio Department of Rehabilitation and Correction’s, Motion to Dismiss is granted and, accordingly, Trawick’s Petition for Writ of Mandamus is dismissed.

TIMOTHY P. CANNON, P.J., DIANE V. GRENDALL, J., THOMAS R. WRIGHT, J.,
concur.