

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

MATTHEW M. LUSANE,	:	PER CURIAM OPINION
	:	
Relator,	:	CASE NO. 2014-P-0049
	:	
- VS -	:	
	:	
CHRISTOPHER HEVERLY, LIEUTENANT,	:	
OHIO STATE HIGHWAY PATROL,	:	
	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Matthew M. Lusane, pro se, PID: A660-925, Lorain Correctional Institution, 2075 South Avon-Belden Road, Grafton, OH 44044 (Relator).

Mike DeWine, Ohio Attorney General, State Office Tower, 30 East Broad Street, 25th Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} This matter is before this court on the August 4, 2014 pro se “Complaint for a Writ of Mandamus” filed by Relator, Matthew M. Lusane. The complaint was time-stamped with the court of appeals and assigned an appellate case no., 11th Dist. No. 2014-P-0049 by the clerk of courts. However, the pleading contained a caption for the Portage County Court of Common Pleas. This court granted appellant leave to file an

amended complaint on August 19, 2014. Relator filed his amended complaint containing the caption for Eleventh District Court of Appeals on September 2, 2014.

{¶2} Relator requests that this court order respondent, Lieutenant Christopher Heverly of the Ohio State Highway Patrol (“OSHP”), to disclose various public records surrounding Relator’s arrest in July 2013 for driving under the influence.

{¶3} On September 10, 2014, Respondent filed a Motion to Dismiss with an attached affidavit. On November 17, 2014 Relator filed Motion to Object which this court will consider as a Response to the Motion to Dismiss. On November 18, 2014 the Portage County Clerk of Courts apparently re-filed (or filed another copy of) Relator’s Motion to Dismiss, indicating on the docket that it was filed by Respondent. On November 25, 2014, Relator filed a letter with the Portage County Clerk of Courts regarding the duplicate copy of his Motion to Object filed on November 18, 2014. Respondent did file a Reply to Relator’s Response to the Motion to Dismiss on December 8, 2014.

{¶4} The records sought by Relator are materials relating to his July 2013 arrest, wherein Trooper N.H. King with the OSHP, arrested Relator on a charge of operating a motor vehicle under the influence of drugs and/or alcohol in violation of R.C. 4511.19(A)(1)(a). The records Relator seeks includes police reports, audio and video recordings, copies of the certification involving the Datamaster device used to test breath-alcohol, various police reports, and officer records. We note that Relator was found guilty by a jury in this matter in August 2014 and was sentenced to six years in prison by the trial court. Relator’s appeal of his conviction is pending before this court as Case Number 2014-P-0057.

{¶5} For the reasons that follow, we deny Relator's writ.

{¶6} R.C. 2731.01 states: "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."

{¶7} "To be entitled to a writ of mandamus, the relator must be able to prove that: (1) he has a clear legal right to have a specific act performed by a public official; (2) the public official has a corresponding duty to perform that act; and (3) there is no other legal remedy that could be pursued to adequately resolve the matter." *State ex rel. Sanders v. Enlow*, 11th Dist. Portage No. 2010-P-0022, 2010-Ohio-5053, ¶14, citing *State ex rel. Appenzeller v. Mitrovich*, 11th Dist. Lake No. 2007-L-125, 2007-Ohio-6157, ¶5. However, a Relator in a statutory public records mandamus action need not prove a lack of adequate remedy at law. *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 580 (2001).

{¶8} "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 (* * *).' *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, at ¶14 * * * (citation omitted). 'Sua sponte dismissal without notice is warranted when a complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint.' *Id.* (citation omitted); *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 316 * * *

(citations omitted).” *State ex rel. Cioffi v. Stuard*, 11th Dist. Trumbull No. 2011-T-0083, 2011-Ohio-5707, ¶18. (Parallel citations omitted.)

{¶9} A review of the record shows that Respondent has provided all records responsive to Relator’s request (other than those that do not exist, those not kept by respondents, those that were not specifically identified, or those properly withheld in accordance with law); properly denied those requests that were ambiguous and overly broad; and provided all required explanation and legal authority throughout this matter.

{¶10} Also, we note that Relator is seeking records related to his August 2014 conviction—records that he should have obtained through the process of discovery in that case. While neither R.C. 149.43 nor Crim.R. 16 precludes an accused from obtaining public records from law enforcement agencies, Crim.R. 16 is specific to the procedure in criminal cases and is the preferred method for a defendant to obtain discovery. *State v. Athon*, 136 Ohio St.3d 43, 2013-Ohio-1956, ¶18.

{¶11} Accordingly, it is the order of this court that Relator’s mandamus petition is hereby dismissed. Any pending motions are hereby overruled as moot.

TIMOTHY P. CANNON, P.J., CYNTHIA WESTCOTT RICE, J., COLLEEN MARY O’TOOLE, J., concur.