

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

SAMUEL D. HOFFMEYER

Petitioner

-VS-

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Respondent

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 10CA68

OPINION

CHARACTER OF PROCEEDING:

Writ of Mandamus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

October 28, 2010

APPEARANCES:

For Petitioner

For Respondent

SAMUEL D. HOFFMEYER, PRO SE  
Richland Correctional Institution  
1001 Olivesburg Road  
Mansfield, Ohio 44901

RYAN G. DOLAN  
Assistant Attorney General  
Criminal Justice Section  
150 East Gay Street, 16th Floor  
Columbus, Ohio 43215-6001

*Hoffman, P.J.*

{¶1} Petitioner, Samuel D. Hoffmeyer, has filed a Petition for Writ of Mandamus requesting Respondent be ordered to provide Petitioner with a second opinion medical exam. Respondent has filed a motion to dismiss on the basis Petitioner has failed to state a claim upon which relief may be granted.

{¶2} Petitioner alleges he suffers from health problems due to the ingestion of contaminated food. Because Petitioner is dissatisfied with the diagnosis and treatment he has received while in Respondent's care, he is requesting a writ be issued ordering Respondent to transport Petitioner to the Cleveland Clinic for medical testing.

{¶3} Prior to reaching the merits of the Petition or motion to dismiss, we find Petitioner has not properly brought this action. R.C. 2731.04 provides, "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." Failure to comply with these requirements is grounds for dismissal. *Thorne v. State*, 8th Dist., 2004-Ohio-6288; *Maloney v. Court of Common Pleas of Allen County* (1962), 173 Ohio St. 226, 181 N.E.2d 270. Relator herein has not properly brought this complaint. *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382; *Perotti v. Mahoning County Clerk*, 7th Dist. No. 05-MA-202, 2006-Ohio-673. See also, *Selway v. Court of Common Pleas Stark County*, 2007 WL 2482621, \*1 (Ohio App. 5 Dist.). We will nonetheless address the merits of the petition.

{¶4} To be entitled to the issuance of a writ of mandamus, the Relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate

remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41, 324 N.E.2d 641, citing *State ex rel. National City Bank v. Bd. of Education* (1977) 520 Ohio St.2d 81, 369 N.E.2d 1200.

{¶5} Petitioner raises only federal constitutional claims relative to Respondent's duty to provide a second opinion. The Supreme Court has held, "A civil rights action under Section 1983, Title 42, U.S.Code constitutes an adequate legal remedy which precludes extraordinary relief where state prisoners challenge the conditions of their confinement and their claims are limited to alleged violation of their federal constitutional and statutory rights. *State ex rel. Carter v. Schotten* (1994), 70 Ohio St.3d 89, 91-92, 637 N.E.2d 306, 309." *State ex rel. Peebles v. Anderson* (1995), 73 Ohio St.3d 559, 560, 653 N.E.2d 371, 373.

{¶6} As the Eleventh District explained, "[T]he "adequate remedy" analysis in *Carter* has been extended to claims which involved other aspects of prison conditions. For example, in *State ex rel. Perotti v. McFaul*, 8th Dist. No. 83622, 2004-Ohio-491, the prisoner's habeas corpus challenge to the adequacy of his medical treatment was dismissed on the basis that he could obtain the relief sought through a "1983" civil rights action. See, also, *State ex rel. Peebles v. Anderson* (1995), 73 Ohio St.3d 559, 653 N.E.2d 371." *State ex rel. Waites v. Gansheimer*, 2006 WL 847217, 2 (Ohio App. 11 Dist.) citing *State ex rel. Carter v. Schotten* (1994), 70 Ohio St.3d 89, 637 N.E.2d 306.

{¶7} Because Petitioner has or had an adequate remedy at law by way of a 1983 action, the writ will not issue, and Respondent's motion to dismiss is granted.

{¶8} MOTION TO DISMISS GRANTED.

{¶9} CAUSE DISMISSED.

{¶10} COSTS TO PETITIONER.

{¶11} IT IS SO ORDERED.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer  
HON. SHEILA G. FARMER

s/ Patricia A. Delaney  
HON. PATRICIA A. DELANEY

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-vs-

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Respondent

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JUDGMENT ENTRY

Case No. 10CA68

For the reasons stated in our accompanying Memorandum-Opinion,  
Respondent's motion to dismiss is granted.

MOTION TO DISMISS GRANTED.

CAUSE DISMISSED.

COSTS TO PETITIONER.

IT IS SO ORDERED.

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer  
HON. SHEILA G. FARMER

s/ Patricia A. Delaney  
HON. PATRICIA A. DELANEY