

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.,
CHARLES AARON MITCHELL

RELATOR

-VS-

MUSKINGUM COUNTY COMMON
PLEAS COURT

RESPONDENT

JUDGES:

Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. Craig R. Baldwin, J.

Case No. CT2014-0038

OPINION

CHARACTER OF PROCEEDING:

Writ of Mandamus- Allied Offenses

JUDGMENT:

Dismissed

DATE OF JUDGMENT:

April 23, 2015

APPEARANCES:

For Plaintiff-Relator, Pro Se

For Defendant-Respondent

CHARLES AARON MITCHELL
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Baldwin, J.

{¶1} Relator, Charles Aaron Mitchell, has filed a Petition for Writ of Mandamus claiming his sentence is void. The “petition” is difficult to understand. Much of the petition centers on discrediting the victim’s testimony. Although not entirely clear, the Court believes Relator is arguing his convictions should have merged as allied offenses. Respondent has filed a response to the petition which essentially requests dismissal of the petition for failure to state a claim upon which relief may be granted.

{¶2} The Supreme Court has held, “[A]llied-offense claims are nonjurisdictional and are not cognizable in an extraordinary-writ action.” *State ex rel. Agosto v. Gallagher*, 131 Ohio St.3d 176, 2012-Ohio-563, 962 N.E.2d 796, 797, ¶ 3 (2012).

{¶3} As a procedural matter, Relator has failed to file an affidavit of his prior civil actions as required by R.C. 2969.25. He has also failed to include a statement of his inmate account as required by this same section.

{¶4} “The requirements of R.C. 2969.25 are mandatory and failure to comply with them requires dismissal of an inmate's complaint. *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 259, 719 N.E.2d 544 (1999), citing *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 422, 696 N.E.2d 594 (1998). As held by the court of appeals, the affidavit required by R.C. 2969.25(A) must be filed at the time the complaint is filed, and an inmate may not cure the defect by later filings. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982, ¶ 9 (an inmate's “belated attempt to file the required affidavit does not excuse his noncompliance. See R.C. 2969.25(A), which requires that the affidavit be filed ‘[a]t the time that an inmate commences a civil action or appeal against a government entity or employee’ ”

[emphasis sic]).” *State ex rel. Hall v. Mohr*, 140 Ohio St.3d 297, 298, 2014-Ohio-3735, ¶ 4 (2014).

{¶5} Because allied offense claims are not cognizable in mandamus and because Relator has failed to comply with R.C. 2969.25, the petition is dismissed.

By: Baldwin, J.

Hoffman, P.J. and

Farmer, J. concur.