

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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|------------------------|---|------------------------------|
| STATE OF OHIO | : | JUDGES: |
| | : | Hon. W. Scott Gwin, P.J. |
| Respondent | : | Hon. William B. Hoffman, J. |
| | : | Hon. Patricia A. Delaney, J. |
| -vs- | : | |
| | : | |
| FRANK K.C. HERTEL, SR. | : | Case No. 15 CAD 04 0032 |
| | : | |
| Relator | : | <u>OPINION</u> |

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 14 CRI 01 0021 & 00 CRI 11 361

JUDGMENT: Dismissed

DATE OF JUDGMENT: February 26, 2016

APPEARANCES:

For Plaintiff-Appellee

CAROL HAMILTON O'BRIEN
Delaware County Prosecutor
By: R. Joseph Varvel
Assistant Prosecuting Attorney
140 N. Sandusky Street
Delaware, OH 43015

For Defendant-Appellant

Frank K.C.Hertel Sr. (Pro Se)
ASPC Florence South
P.O. Box 8400
Florence, AZ 85132

Delaney, J.

{¶1} Relator, Frank K.C. Hertel, Sr., has filed a “Motion for a Writ of Mandamus” requesting a writ be issued to compel Judge Everett Krueger to provide Relator with written transcripts. The State of Ohio has filed a Motion to Dismiss.

{¶2} We find Relator 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.”

{¶3} Failure to comply with these requirements is grounds for dismissal. *Thorne v. State*, 8th Dist. No. 85024, 2004–Ohio–6288; *Maloney v. Court of Common Pleas of Allen County*, 173 Ohio St. 226, 181 N.E.2d 270 (1962).

{¶4} Relator herein has not properly brought this cause as a petition in the name of the state. See *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. *Selway v. Court of Common Pleas Stark County*, 5th Dist. No.2007CA00213, 2007–Ohio–4566.

{¶5} The pleading filed is a “motion” not a petition. The pleading filed is captioned “State of Ohio vs. Frank K.C. Hertel, Sr.” Not only has Relator failed to file a petition, he has failed to name a respondent other than himself.

{¶6} Further, the Petition does not contain an affidavit of verity as required by R.C. 2731.04.

Delaney, J.

{¶7} For these reasons, we dismiss this action.

By Delaney, J.

Gwin, P.J. and

Hoffman, J. concur.