

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Rose Mary McIntosh

Court of Appeals No. E-07-071

Petitioner (Relator)

v.

Judge Roger E. Binette and
Erie County Prosecutors Office

DECISION AND JUDGMENT ENTRY

Respondents

Decided: January 22, 2008

* * * * *

Rose Mary McIntosh, pro se.

Kevin J. Baxter, Erie County Prosecuting Attorney, and Mary Ann
Barylski, Assistant Prosecuting Attorney, for respondents.

* * * * *

SKOW, J.

{¶ 1} On December 24, 2007, relator, Rose Mary McIntosh, filed this petition in mandamus, requesting a writ ordering Judge Roger E. Binette, Erie County Court of Common Pleas, and the Erie County Prosecutors Office (jointly "respondents"), to act on her postconviction petition filed August 13, 2007. Respondents have already filed

motions to dismiss, asserting that they had not been served with a copy of the petition and had no knowledge of its existence until the filing of the instant petition.

{¶ 2} Instead of proceeding to rule on the merits of this petition in mandamus, we find it must be dismissed as invalid on its face. Relator, as a pro se incarcerated person, is required to comply with the prerequisites of R.C. 2969.25, which provides:

{¶ 3} "(A) 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. The affidavit shall include all of the following for each of those civil actions or appeals:

{¶ 4} "(1) A brief description of the nature of the civil action or appeal;

{¶ 5} "(2) The case name, case number, and the court in which the civil action or appeal was brought;

{¶ 6} "(3) The name of each party to the civil action or appeal;

{¶ 7} "(4) The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate's counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award."

{¶ 8} Relator has failed to attach an affidavit of all civil actions filed by her within the past five years as required by R.C. 2969.25. *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285; *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421.

{¶ 9} Accordingly, her petition for writ of mandamus is dismissed. Court costs of this action are assessed to relator.

WRIT DENIED.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, P.J.

JUDGE

William J. Skow, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
