

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

State of Ohio, ex rel. Jose Rodriguez

Court of Appeals No. WD-11-041

Relator

v.

Cindy A. Hofner, Clerk of the Wood
County Court of Common Pleas

DECISION AND JUDGMENT

Respondent

Decided: August 16, 2011

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Jose Rodriguez, pro se.

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OSOWIK, P.J.

{¶ 1} On July 8, 2011, relator, Jose Rodriguez, filed a mandamus action in this court in which he asks this court to compel respondent, Wood County Court of Common Pleas Clerk Cindy A. Hofner, to allow him to file a citizen's criminal complaint against "Mike Ackley, Luis Melendez, Gwen Howe Geber, Saul Ramirez & Mark Apple." In his petition, relator states that he has attempted to file a criminal complaint against the

above-named individuals in the Wood County Court of Common Pleas on two different occasions; however, his filings were not accepted by respondent. Attached to the petition is relator's "Motion to proceed in forma pauperis," an affidavit of indigency, and a copy of a letter written by respondent on June 2, 2011, stating that his filings were being returned because: (1) they were not filed in accordance with Wood County Common Pleas Local Rule 3.01, and (2) citizen-generated criminal complaints are not filed "directly in the Wood County Clerk of Courts Office."

{¶ 2} We note initially that, to establish the right to a writ of mandamus, the party seeking the writ must demonstrate: "(1) that the relator has a clear legal right to the relief sought, (2) that the respondent is under a clear legal duty to perform the requested act, and (3) that the relator has no plain and adequate remedy in the ordinary course of law." *State ex rel. Cleveland Cold Storage v. Beasley*, 10th Dist. No. 07AP-736, 2008-Ohio-1516, ¶ 9, citing *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007-Ohio-3780.

{¶ 3} Pursuant to R.C. 2935.09(D) :

{¶ 4} "(D) A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official¹ for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the

¹The term "reviewing official" is defined as "a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court of before a magistrate, or a magistrate." R.C. 2735.09(A).

prosecution of offenses in the court of before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record before or after the normal business hours of the reviewing officials if the clerk's office is open at those times.² A clerk who receives an affidavit before or after the normal business hours of the reviewing officials shall forward it to a reviewing official when the reviewing official's normal business hours resume."

{¶ 5} R.C. 2935.09 and R.C. 2935.10, taken together, provide a method where, "in limited circumstances, a private citizen [may] file an affidavit charging an offense with the clerk of courts for the purpose of having a reviewing official determine whether a complaint should be filed. * * * [R.C. 2935.09] distinguishes a complaint from an affidavit. The plain language of this code section does not permit the filing of a complaint by a private citizen * * *." *State ex rel. Muff v. Wollenberg*, 5th Dist. No. 08-CA-11, 2008-Ohio-4699, ¶ 12. Accordingly, in cases where a private citizen seeks to file his own criminal complaint, the clerk of court has no duty to file it. *State ex rel. Dominguez v. Ohio* (June 29, 2011), __ Ohio St.3d __, 2011-Ohio-3091, ¶ 2, citing *State ex rel. Muff v. Wollenberg*, supra.

{¶ 6} On consideration, we find that, as a matter of law, respondent had no duty to accept relator's criminal complaint. In addition, R.C. 2935.09 and 2935.10 provide

²The procedure for the filing of a private citizen's criminal complaint is further outlined in R.C. 2935.10.

citizens such as relator with a way to initiate criminal proceedings. Accordingly, we hereby dismiss the petition in mandamus. Costs are assessed to relator.

{¶ 7} The clerk is directed to serve on all parties, within three days, a copy of this decision in the manner prescribed by Civ.R. 5(B).

{¶ 8} It is so ordered.

PETITION DISMISSED.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.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.
