

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

State of Ohio, ex rel. Lonny Bristow

Court of Appeals No. L-12-1319

Relator

v.

Darlene Mitchell, Public Records
Coordinator, Toledo Correctional Institution

DECISION AND JUDGMENT

Respondent

Decided: November 21, 2013

* * * * *

Lonny Bristow, pro se.

Michael DeWine, Ohio Attorney General, and David A.
Lockshaw, Jr., Assistant Attorney General, for respondent.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This matter is before the court as an original action in mandamus. Relator, Lonny Bristow, has filed this action against respondent, Darlene Mitchell, the public records coordinator at the Toledo Correctional Institution. In his petition, relator requests

that this court issue a writ of mandamus ordering respondent to comply with his public records request that respondent provide him with all e-mails to and from Warden Ed Sheldon on October 26 and 29, 2012. Respondent has filed a motion to dismiss.

{¶ 2} 6th Dist.Loc.App.R. 7(A) provides in relevant part:

No complaint in * * * mandamus * * * may be accepted for filing in this court unless the party bringing the action deposits with the clerk of the sum of \$100.00 as security for the payment of the costs that may accrue in the action. * * * If the party bringing the action or the party seeking the attendance of witnesses files with the clerk his sworn affidavit of inability to secure costs by such prepayment, the clerk shall file the complaint and subpoena the witnesses without the deposits.

{¶ 3} Bristow has attached to his petition a purported affidavit of indigency in which he claims that he does not have the funds to pay for the filing of this action. R.C. 2319.02 defines an affidavit as “a written declaration under oath, made without notice to the adverse party.” The document filed by Bristow was not notarized. In a similar case before the Supreme Court of Ohio, the court determined that if a “relator’s statement is not notarized, it does not meet the requirements of an affidavit of indigency and therefore is not sufficient for waiver of the docket fees” in the case. *Rudd v. Graham*, 74 Ohio St.3d 1506, 659 N.E.2d 797 (1996). *See also State ex rel. Strothers v. Sikora*, 8th Dist. Cuyahoga No. 71174, 1997 WL 209185 (Apr. 24, 1997).

{¶ 4} Because relator has not deposited a filing fee or filed a proper affidavit of indigency sufficient to waive the fee, this writ is hereby dismissed at relator's costs. The clerk is directed to serve upon the parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ denied.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, 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:
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