

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

State of Ohio, ex rel. Michael R. Johnson

Court of Appeals No. E-17-007

Relator

v.

Tygh M. Tone

DECISION AND JUDGMENT

Respondent

Decided: March 22, 2017

* * * * *

Michael R. Johnson, pro se.

Kevin J. Baxter, Erie County Prosecuting Attorney, and Mark P. Smith,
Assistant Prosecuting Attorney, for respondent.

* * * * *

SINGER, J.

{¶ 1} Relator, Michael R. Johnson, an inmate at the Richland Corrections Institute (RiCI) in Richland County, Ohio, has filed an application for writ of mandamus requesting this court “compel Tygh M. Tone Judge of Erie County Court of Common Pleas to reach a particular determination regarding his request for release from custody.”

On March 9, 2017, respondent, the Erie County Court of Common Pleas, filed a motion to dismiss the writ for failure to state a claim pursuant to Civ.R. 12(B)(6).

Facts

{¶ 2} Relator asserts that the trial court sentenced him to 36 months incarceration in error because his sentence was only supposed to be 22 months. Relator asserts that this original sentence was a part of his plea agreement. However, the record indicates differently.

{¶ 3} The record reveals that on September 17, 2012, judgment was entered against relator for trafficking cocaine with enhancement, in violation of R.C. 2925.03(A)(1) and (C)(4)(b), and lesser trafficking cocaine, in violation of R.C. 2925.03(A)(1) and (C)(4)(a). For both convictions, relator was sentenced to community sanctions. The September 17, 2012 entry explicitly informed relator of the possibility of the court imposing a total sentence of 36 months in the event he violated his community sanctions. The entry enumerated and listed nine conditions of his sanctions. Relator was notified of his right to appeal within 30 days, however, no appeal was presented.

{¶ 4} On February 20, 2014, a probable cause hearing was requested and set to address relator's violation(s) of the community sanctions, which were imposed in September 2012. On October 29, 2014, relator's community sanctions were revoked and he was resentenced to the 36 months incarceration the court notified him of in September 2012. This is the sentence he now attempts to collaterally attack through mandamus, arguing his sentence term has ended and he should be released immediately.

{¶ 5} R.C. 2731.01 provides, “[m]andamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.”

{¶ 6} In disposing of this petition, we hold relator is not entitled to mandamus relief because he did not comply with R.C. 2969.25 and he did not state a claim for relief. In addition, mandamus is not the appropriate action to claim entitlement to immediate release from prison.

Analysis

{¶ 7} First, relator did not comply with R.C. 2969.25 because he failed to submit an affidavit as to prior actions.

{¶ 8} R.C. 2969.25 provides that, at the time of petitioning for mandamus relief, an inmate must “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.” *See State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 685 N.E.2d 1242 (1997) (affirming dismissal because relator failed to comply with R.C. 2969.25).

{¶ 9} Relator here did not comply with R.C. 2969.25 and, therefore, his request for mandamus relief is denied on this ground.

{¶ 10} Next, the petition does not properly set forth a claim for relief.

{¶ 11} 6th Dist.Loc.App.R. 6(B) requires a petition for mandamus “set forth a claim for relief.” Further, “[i]t is axiomatic that before a writ of mandamus may issue, a

relator must establish a clear legal right thereto.” *See, e.g., Kelly v. Jenkins*, 7th Dist. Mahoning Case No. 77 CA 29, 1977 Ohio App. LEXIS 10206, *3-4 (Apr. 12, 1977) (“The burden of establishing such a clear right is on the relator.”).

{¶ 12} Here, relator has not established a clear legal right to mandamus relief and his request is denied on this ground.

{¶ 13} Third and final, relator has failed to institute the proper action to request immediate release.

{¶ 14} Mandamus is not the appropriate action for persons claiming entitlement to immediate release from prison. *See State ex rel. Alford*, 80 Ohio St.3d 285, 685 N.E.2d 1242, at 1243, citing *State ex rel. Lemmon v. State Adult Parole Auth.*, 78 Ohio St.3d 186, 677 N.E.2d 347 (1997).

Conclusion

{¶ 15} Accordingly, and based on the foregoing grounds, we decline to issue the writ and the petition is not well-taken and is denied. Relator is ordered to pay the costs of this action. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal pursuant to Civ.R. 58(B).

Writ denied.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, 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:
<http://www.supremecourt.ohio.gov/ROD/docs/>.