

[Cite as *State ex rel. Levine v. Gallagher*, 2003-Ohio-1971.]

COURT OF APPEALS OF OHIO EIGHTH DISTRICT
COUNTY OF CUYAHOGA
NO. 82575

STATE EX REL. JEFFREY LEVINE :
 Relator : JOURNAL ENTRY
 vs. : AND
 : OPINION
 JUDGE EILEEN GALLAGHER :
 Respondent :

DATE OF JOURNALIZATION:	April 17, 2003
CHARACTER OF PROCEEDING:	Petition for Writ of Mandamus (Motion No. 347633)
JUDGMENT:	WRIT DISMISSED

APPEARANCES:

For Relator: JEFFREY C. LEVINE, pro se
Inmate No. A431-474
Grafton Correctional Institution
2500 South Avon Beldon Road
Grafton, Ohio 44044

For Respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor

DIANE SMILANICK, Assistant
1200 Ontario Street
Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, J.:

{¶1} On March 6, 2003, the relator, Jeffrey Levine, commenced this mandamus action against respondent Judge Eileen Gallagher to compel her to rule on his motion for jail time credit in *State v. Levine*, Cuyahoga County Court of Common Pleas Case No. CR-423443, which was filed on July 1, 2002. On April 1, 2003, respondent, through the Cuyahoga County Prosecutor, filed an answer and a motion for summary judgment.

{¶2} Attached to the respondent's motion for summary judgment is a copy of the court's journal entry granting Levine 90 days jail time credit, thereby rendering his request for a writ of mandamus moot. *State ex rel. Grant v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163; *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 278, 658 N.E.2d 723.

{¶3} Additionally, Levine failed to support his complaint with an affidavit "specifying the details of the claim" as required by Local Rule 45(B)(1)(a). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077; *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶4} Levine also failed to comply with R.C. 2969.25, which mandates that he attach an affidavit to his complaint that describes each civil action or appeal of a civil action filed in the previous five years. The failure to provide such affidavit constitutes sufficient grounds for dismissal of the relator's complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Board* (1998), 82 Ohio St.3d 421, 696 N.E.2d 594; *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285, 685 N.E.2d 1242.

{¶5} Accordingly, we grant the respondent's motion for summary judgment. Relator to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ dismissed.

JAMES J. SWEENEY, P.J. CONCURS

DIANE KARPINSKI, J. CONCURS

COLLEEN CONWAY COONEY
JUDGE