

[Cite as *State ex rel. Jones v. Suster*, 2003-Ohio-5940.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 83457

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
WILLIAM JONES	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
JUDGE RONALD SUSTER	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION:

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Denied.
Order No. 353515
Motion No. 353427

APPEARANCES:

For Relator: WILLIAM JONES, PRO SE
Inmate No. 444-069
North Coast Correctional
Treatment Facility
2000 S. Avon Belden Road
Grafton, Ohio 44044

For Respondent: WILLIAM D. MASON, ESQ.
Cuyahoga County Prosecutor
BY: DIANE SMILANICK, ESQ.
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

Judge Frank D. Celebrezze Jr.

On September 15, 2003, relator William Jones commenced this mandamus action against respondent Judge Robert Suster to compel him to rule on Jones' motion for jail time credit in *State v. Jones*, Cuyahoga County Court of Common Pleas case No. CR-432770, which was filed on July 17, 2003. On October 16, 2003, respondent, through the Cuyahoga County Prosecutor, filed an answer and a motion for summary judgment.

Attached to the respondent's motion for summary judgment is a copy of the judgment entry which indicates that on September 22, 2003, respondent granted 46 days jail time credit thereby rendering Jones' 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.

Additionally, Jones failed to support his complaint with an affidavit "specifying the details of the claim" as required by Loc.R. 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.

Jones 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.

We also find that Jones' petition for a writ of mandamus is defective because it is improperly captioned. A petition for a writ of mandamus must be brought in the name of the state, on relation of the person applying. Jones' failure to properly caption his petition

constitutes sufficient reason for dismissal. *Allen v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Judge Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

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 denied.

FRANK D. CELEBREZZE, JR.,
JUDGE

COLLEEN CONWAY COONEY, J., CONCURS

TIMOTHY E. MCMONAGLE, J., CONCURS