

[Cite as *Thomas v. Coyne*, 2003-Ohio-6164.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 82988

PHILLIP V. THOMAS, III	:	ORIGINAL ACTION
	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
WILLIAM J. COYNE, JUDGE	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION:

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Denied
Motion No. 350125
ORDER NO. 354024

APPEARANCES:

For Relator:	PHILLIP V. THOMAS, PRO SE
	Inmate No. 441-091
	Richland Correctional
	Institution
	P. O. Box 8107
	Mansfield, Ohio 44901

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

MICHAEL J. CORRIGAN, J.

{¶1} Relator requests that this court compel respondent judge to rule on the motion for finding of fact on verbal motion to withdraw guilty plea and motion of recusal filed in *State v. Thomas*, Cuyahoga County Court of Common Pleas Case No. CR-428257 on March 26 and 31, 2003, respectively.

{¶2} Respondent has filed a motion for summary judgment attached to which is a copy of a journal entry issued by respondent and received for filing by the clerk on June 23, 2003 in which respondent disposes of both motions. Relator has not opposed the motion. Respondent argues that he has discharged his duty. We agree.

{¶3} The complaint is also defective. Although R.C. 2731.04 requires that actions in mandamus must be on relation of the state in the name of the person bringing the action, the caption reads "Phillip V. Thomas, III vs. Judge William Coyne." Furthermore, R.C. 2969.25 requires that a prisoner file an affidavit describing each civil action or appeal of a civil action which the prisoner filed in the previous five years in any state or federal court and that a prisoner file a certified statement by the prison cashier setting forth the balance in the prisoner's private account for each of the preceding six months. Relator has failed to comply with both of these requirements. Compare *Anderson v. Cleveland Common Pleas Court*, Cuyahoga App. No. 83003, 2003-Ohio-4352. Similarly, relator has failed to comply with Loc.App.R. 45(B)(1)(a) which requires that complaints in original actions be supported by an affidavit from the plaintiff or relator specifying the details of the claim. *State ex rel. Hightower v. Russo*, Cuyahoga App. No. 82321, 2003-

Ohio-3679. Each of these defects provides a basis for dismissal of the complaint in mandamus.

{¶4} Accordingly, respondent's motion for summary judgment is granted. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ denied.

MICHAEL J. CORRIGAN,
PRESIDING JUDGE

TIMOTHY E. MCMONAGLE, J., CONCURS

SEAN C. GALLAGHER, J., CONCURS