

[Cite as *State ex rel. Williams v. O'Donnell*, 2003-Ohio-6625.]

COURT OF APPEALS OF OHIO EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82850

STATE OF OHIO, ex rel.
VINCENT WILLIAMS

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Relator

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:

JOURNAL ENTRY

and

vs.

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OPINION

JOHN P. O'DONNELL, JUDGE
COURT OF COMMON PLEAS

Respondent

CHARACTER OF PROCEEDING:

WRIT OF MANDAMUS
(Motion No. 349078)

JUDGMENT:

WRIT DENIED

DATE OF JOURNALIZATION:

December 11, 2003

APPEARANCES:

For Relator:

VINCENT WILLIAMS, PRO SE
North Coast Correctional
Treatment Facility
2000 S. Avon Belden Road
Grafton, Ohio 44044

For Respondent:

WILLIAM D. MASON
Cuyahoga County Prosecutor
DIANE SMILANICK, Assistant
1200 Ontario Street, 8TH Floor
Cleveland, Ohio 44113

ANTHONY O. CALABRESE, JR., J.

{¶1} Relator requests that this court compel respondent judge to rule on his motion for jail-time credit filed in *State v. Williams*, Cuyahoga County Court of Common Pleas Case Nos. CR-407332 and CR-430523 on February 11, 2003.

{¶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 May 15, 2003 in which respondent granted relator 104 days jail-time credit. Relator has not opposed the motion. Respondent argues that he has discharged his duty and that relator is not, therefore, entitled to relief in mandamus. 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 “State of Ohio v. Vincent Williams.” 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 *State v. Johnson*, Cuyahoga App. No. 82251, 2003-Ohio-1848. 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. We also note that relator called his filing “MOTION TO WRIT OF MANDAMUS MOTION TO COMPEL.” An

action in mandamus may not be commenced by a motion. *State ex rel. Dept. of Rehab. & Corr. v. Horton*, Cuyahoga App. No. 82705, 2003-Ohio-2755. 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).

{¶5} Writ denied.

ANTHONY O. CALABRESE, JR.
JUDGE

ANN DYKE, P.J., and DIANE KARPINSKI, J. concur.