

[Cite as *Nash v. McGinty*, 2004-Ohio-2542.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
NO. 84348

TIMOTHY M. NASH	:	PETITION FOR WRIT
	:	OF MANDAMUS
Relator	:	
	:	<i>JOURNAL ENTRY</i>
vs.	:	
	:	<i>AND</i>
TIMOTHY McGINTY	:	
	:	<i>OPINION</i>
Respondent	:	

DATE OF JOURNALIZATION: MAY 17, 2004

JUDGMENT: DISMISSED.
Motion No. 359481

APPEARANCES:

For relator: TIMOTHY M. NASH
Cuyahoga County Jail
P. O. Box 5600
Cleveland, Ohio 44101

For respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor
9th Floor justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.

{¶1} Timothy M. Nash has filed a complaint for a writ of mandamus. Nash seeks an order from this court which requires Judge Timothy J. McGinty to grant a motion to withdraw a plea of guilty as filed in *State v. Nash*, Cuyahoga County Court of Common Pleas Case No. CR-444014. Sua sponte, we dismiss Nash's complaint for a writ of mandamus.

{¶2} Initially, we find that Nash's complaint for a writ of mandamus is defective since it is improperly captioned. A complaint for a writ of mandamus must be brought in the name of the state, on relation of the person applying. The failure of Nash to properly caption his complaint for a writ of mandamus warrants dismissal. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Cleary* (Jan. 11. 2001), Cuyahoga App. No. 78763. Anderson has also failed to comply with R.C. 2969.25 which requires the attachment of an affidavit to the complaint for a writ of mandamus that describes each civil action or appeal filed by Anderson within the previous five years in any state or federal court. Anderson's failure to comply with R.C. 2969.25 warrants the dismissal of the complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. It must also be noted that Nash has failed to comply with Loc.App.R. 45(B)(1)(a) which mandates that the complaint must be supported by an affidavit which specifies the details of the claim. The failure of Nash to comply with the supporting affidavit requirement of Loc.App.R. 45(B)(1)(a) requires dismissal of the complaint for a writ of mandamus.

State ex rel. Smith v. McMonagle (Jul 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. NO. 70077. Finally, a review of the docket in *State v. Nash*, supra, fails to disclose that Nash filed a motion to withdraw his plea of guilty. Thus, Judge McGinty possesses no duty to issue a ruling with regard to a non-existent motion to withdraw plea of guilty. Cf. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723; *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163..

{¶3} Accordingly, we dismiss Nash’s complaint for a writ of mandamus. Costs to Nash. It is further ordered that the Clerk of the Eighth District Court of Appeals serve copies of this judgment upon all parties as required by Civ.R. 58(B).

{¶4} The complaint is dismissed.

Complaint dismissed.

MICHAEL J. CORRIGAN, A.J., and DIANE KARPINSKI, J., concur.

PATRICIA ANN BLACKMON
JUDGE