

[Cite as *Santiago v. State*, 2004-Ohio-3952.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84586

ANIBAL SANTIAGO, JR.	:	ORIGINAL ACTION
	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
STATE OF OHIO	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: JULY 28, 2004

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Dismissed.
Order No. 362013
Motion No. 360209

APPEARANCES:

For Relator: ANIBAL SANTIAGO, JR., PRO SE
Inmate No. 342-092
P.O. Box 901
Leavittsburg, Ohio 44430

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

JUDGE FRANK D. CELEBREZZE, JR.

{¶1} Relator, Anibal Santiago, Jr., is the defendant in *State v. Santiago*, Cuyahoga County Court of Common Pleas Case No. CR-348400. He pled guilty to involuntary manslaughter, felonious assault and aggravated burglary. In 1997, the court of common pleas sentenced him to a total of 25 years.

{¶2} Santiago requests that this court compel the court of common pleas to vacate his sentence and resentence him. Respondent filed a motion to dismiss to which Santiago has not filed a response. For the reasons stated below, we grant the motion to dismiss and dismiss this action.

{¶3} The fundamental criteria for issuing a writ of mandamus are well-established:

{¶4} **“In order to be entitled to a writ of mandamus, relator must show (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State, ex rel. National City Bank v. Bd. of Education* (1977), 52 Ohio St. 2d 81, 369 N.E.2d 1200.”**

{¶5} *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St. 2d 41, 42, 374 N.E.2d 641.

Of course, all three of these requirements must be met in order for mandamus to lie.

{¶6} In *Goudlock v. State*, Cuyahoga App. No. 84135, 2004-Ohio-2352, the relator requested the same relief and made the same argument as Santiago does in this case.

{¶7} **“Goudlock argues that he is entitled to relief in mandamus because the Supreme Court held in *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, that a trial court imposing consecutive sentences or a non-minimum sentence on a first offender must state its statutorily required findings at the sentencing hearing. *Comer*, supra, pars. 1 and 2 of the syllabus, citing R.C. 2929.14(B) and (E)(4) as well as 2929.19(B)(2)(c).**

{¶8} *Goudlock*, supra, at ¶5. Respondent in *Goudlock* argued, as respondent

argues in this case, that “[o]nce execution of a sentence has been commenced by delivering a defendant into a state penal institution, a trial court has no authority to modify the sentence except as provided by statute.” *State v. Wells*, Cuyahoga App. No. 82334, 2003-Ohio-4071, at ¶9. The complaint in mandamus clearly indicates that relator remains incarcerated at a state penal institution.

{¶9} Respondent also contends that relief in mandamus is not appropriate.

{¶10} **“Extraordinary remedies, *i. e.*, mandamus, prohibition and habeas corpus, are available only when usual forms of procedure are incapable of affording relief. They may not be employed before trial on the merits, as a substitute for an appeal for the purpose of reviewing mere errors, or irregularities in the proceedings of a court having proper jurisdiction, ***.”**

{¶11} *State ex rel Woodbury v. Spitler* (1973), 34 Ohio St.3d 134, 137, 296 N.E. 2d 526 (footnote deleted). Santiago is requesting this court to compel the court of common pleas to vacate his sentence and resentence him. Clearly, the nature of the relief requested is not appropriate for mandamus. Santiago has, therefore, failed to demonstrate either that he has a clear legal right to relief or that the court of common pleas has a clear legal duty to vacate his sentence.

{¶12} The complaint also manifests several defects.

{¶13} **“Moreover, the petition itself is defective because it is improperly captioned. R.C. 2731.04 requires that an application for a writ of mandamus must be by petition, in the name of the state on the relation of the person applying. This failure to properly caption a mandamus action is sufficient grounds for denying the writ and dismissing the petition. *Maloney v. Court of Common Pleas of Allen County* (1962), 173 Ohio St. 226, 181 N.E.2d 270. [Relator] Morton also 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, unreported and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899, unreported.”**

{¶14} *State ex rel. Morton v. Pokorny* (Mar. 1, 2001), Cuyahoga App. No. 79187, at

3. The complaint in this action does not purport to be on relation of relator. Instead, the caption reads “Santiago v. State.” Likewise, there is no affidavit specifying the details of the claim.

{¶15} “* * * **Additionally, relator**”

{¶16} “**did not file an R.C. 2969.25(A) affidavit describing each civil action or appeal of a civil action he had filed in the previous five years in any state or federal court * * ***.”

{¶17} “**State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas (2000), 88 Ohio St.3d 176, 177, 724 N.E.2d 420, 421. As a consequence, we deny relator’s claim of indigency and order him to pay costs. *Id.* at 420.**”

{¶18} *State ex rel. Bristow v. Sidoti* (Dec. 1, 2000), Cuyahoga App. No. 78708, at 3-4. Likewise, in this action, relator has failed to support his complaint with the affidavit required by R.C. 2969.25(A). As a consequence, we order relator to pay costs.

{¶19} Relator “also failed to include the address of the parties in the caption of the complaint as required by Civil Rule 10 (A). This may also be grounds for dismissing the action. *State ex rel. Sherrills v. State* (2001), 91 Ohio St. 3d 133, 742 N.E.2d 651.” *State ex rel. Hall v. Calabrese* (Aug. 16, 2001), Cuyahoga App. No. 79810, at 2.

{¶20} Accordingly, respondent's motion to dismiss 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 dismissed.

FRANK D. CELEBREZZE, JR.
JUDGE

ANN DYKE, P.J., CONCURS

ANTHONY O. CALABRESE, JR., J., CONCURS