

[Cite as *State ex rel. Byrd v. Corrigan*, 2004-Ohio-4634.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84000

STATE OF OHIO, EX REL.	:	ORIGINAL ACTION
DARRYL BYRD	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
JUDGE DANIEL CORRIGAN	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: AUGUST 27, 2004

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Allowed.
Order No. 362760
Motion No. 356999 and
No. 356690

APPEARANCES:

For Relator: DARRYL BYRD, PRO SE
Inmate No. 405-396
Mansfield Correctional Inst.
P.O. Box 788
Mansfield, Ohio 44901-0788

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

JUDGE KENNETH A. ROCCO:

{¶1} Relator, Darryl Byrd, requests that this court compel respondent judge to dispose of the motion for postconviction relief filed by relator in *State v. Byrd*, Cuyahoga County Court of Common Pleas Case No. CR-385990 on December 10, 2001. Respondent has filed a motion to dismiss. Byrd has opposed the motion and moved for summary judgment. Respondent has not opposed the motion for summary judgment.

{¶2} Respondent argues that Byrd failed to comply with R.C. 2969.25 because Byrd

"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 and also did not file an R.C. 2969.25(C) certified statement by his prison cashier setting forth the balance in his private account for each of the preceding six months. *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas* (2000), 88 Ohio St.3d 176, 177, 724 N.E.2d 420, 421."

State ex rel. Bristow v. Sidoti (Dec. 1, 2000), Cuyahoga App. No. 78708, at 3-4.

{¶3} Byrd did, however, file the requisite affidavit and statement as attachments to his motion for leave to proceed in forma pauperis which was filed contemporaneous with the complaint in this action.

{¶4} Respondent also complains that Byrd has not complied strictly 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.*" (Emphasis added.) The affidavit filed in support of and attached

to relator's motion summary judgment is sufficient to comply with Loc.App.R. 45(B)(1)(a).

{¶5} Respondent's argument that the complaint fails to state a claim upon which relief can be granted is untenable. Respondent argues that, because the named respondent - Judge Daniel O. Corrigan - is no longer a judge of the court of common pleas, relief in mandamus would not be appropriate. Yet, Civ.R. 25(D)(1) provides that such an action does not abate and the "successor [in the office] is automatically substituted as a party." As a consequence, we deny respondent's motion to dismiss.

{¶6} The Supreme Court has

"granted extraordinary relief [in mandamus] to compel a trial court judge to rule on a post-conviction-relief petition that had been pending for 12 months because 'prompt action on such petitions should be taken by the court' and the 12-month delay in that case was excessive. *State ex rel. Turpin v. Stark Cty. Court of Common Pleas* (1966), 8 Ohio St.2d 1, 2, 37 Ohio Op. 2d 40, 220 N.E.2d 670."

{¶7} *State ex rel. Bunting v. Haas*, 102 Ohio St.3d 161, 2004-Ohio-2055, 807 N.E.2d 359. The docket in Case No. CR-385990 reflects that Byrd's first and only petition for postconviction relief remains pending more than two years after Byrd filed the petition. Byrd has a clear legal right to a disposition of his petition and respondent (and now, his successor) has a clear legal duty to dispose of the petition. As *Bunting* and *Turpin* demonstrate, relief in mandamus is appropriate under the circumstances in this case.

{¶8} Accordingly, respondent's motion to dismiss is denied and Byrd's motion for summary judgment is granted. The judge who is the successor in office of the original respondent shall dispose of Byrd's petition for postconviction relief within 30 days of the date of this entry. Respondent 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 allowed.

KENNETH A. ROCCO
PRESIDING JUDGE

ANN DYKE, J., CONCURS

FRANK D. CELEBREZZE, JR., J., CONCURS