

[Cite as *State v. Sawyer*, 2004-Ohio-516.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83682

STATE OF OHIO,	:	
	:	PETITION FOR WRIT OF
Respondent	:	MANDAMUS
	:	
-vs-	:	JOURNAL ENTRY AND OPINION
	:	
EUGENE SAWYER,	:	MOTION NO. 355514
	:	
Relator	:	

DATE OF JOURNALIZATION: FEBRUARY 4, 2004

JUDGMENT: DENIED.

APPEARANCES:

For Relator: Eugene Sawyer, Pro Se
Inmate No. 424-218
Grafton Correctional Institute
2500 S. Avon Belden Road
Grafton, Ohio 44044

For Respondent: William D. Mason, Esq.
Cuyahoga County Prosecutor
BY: Jon W. Oebker, Esq.
Assistant County Prosecutor
The Justice Center — 8th Floor
1200 Ontario Street

MICHAEL J. CORRIGAN, A.J.

{¶1} Relator requests that this court compel respondent judge to issue findings of fact and conclusions of law with respect to the petition for postconviction relief filed by relator in *State v. Sawyer*, Cuyahoga County Court of Common Pleas case No. CR-415422 on November 15, 2002.

{¶2} Respondent has filed a motion for summary judgment attached to which is a copy of the findings of fact and conclusions of law issued by respondent and received for filing by the clerk on December 17, 2003. Relator has not opposed the motion. Respondent argues that this action in mandamus is, therefore, moot. We agree.

{¶3} We also note that the complaint is defective. The caption of the complaint is “State of Ohio vs. Eugene Sawyer.” Yet, “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.” *State v. Klein*, Cuyahoga App. No. 82283, 2003-Ohio-1177, at ¶3.

{¶4} “* * * Additionally, relator ‘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. As a consequence, we deny relator’s claim of indigency and order him to pay costs. *Id.* at 420.” *State ex rel. Bristow v. Sidoti* (Dec. 1, 2000), Cuyahoga App. No. 78708, at 3-4.

{¶5} Likewise, in this action, relator has failed to support his complaint with the affidavit required by R.C. 2969.25(A); we deny, therefore, his claim of indigency and order him to pay costs. Additionally, “[t]he failure to comply with R.C. 2969.25 warrants dismissal of the complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Board* (1998), 82 Ohio St.3d 421, 696 N.E.2d 594 and *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285, 685 N.E.2d 1242.” *State ex rel. Hite v. State*, Cuyahoga App. No. 79734, 2002-Ohio-807, at 6.

{¶6} Similarly, Sawyer 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. In his “Verification,”

Sawyer avers “that all facts in this petition are true and accurate to the best of my knowledge and beliefs.” This conclusory statement is not sufficient to satisfy the requirement of Loc.App.R. 45(B)(1)(a) that the affidavit supporting the complaint specify *the details* of the claim. “The absence of facts specifying the details of the claim required by Loc.App.R. 45(B)(1)(a) is a ground for dismissal.” *State ex rel. Sansom v. Wilkinson*, Cuyahoga App. No. 80743, 2002-Ohio-1385, at 7.

{¶7} Accordingly, respondent's motion for summary judgment is granted. 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).

{¶8} Writ denied.

ANN DYKE and DIANE KARPINSKI, JJ., CONCUR.