

[Cite as *State ex rel. Patterson v. Russo*, 2004-Ohio-517.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 83986

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
WILLIAM A. PATTERSON, JR.	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
JUDGE JOSEPH D. RUSSO	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION:	<u>FEBRUARY 2, 2004</u>
CHARACTER OF PROCEEDINGS:	WRIT OF MANDAMUS
JUDGMENT:	Writ Dismissed. Motion No. 355961.

APPEARANCES:

For Relator:	WILLIAM A. PATTERSON, JR., pro se Cuyahoga County Jail P.O. Box 5600 Cleveland, Ohio 44101
For Respondent:	WILLIAM D. MASON, ESQ.

Cuyahoga County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

Judge Frank D. Celebrezze, Jr.

{¶1} On December 24, 2003 petitioner, William A. Patterson, Jr., commenced this mandamus action. In his petition, he asks this court to compel Judge Joseph D. Russo to dismiss the indictments against him because of purported violations of his Fourth Amendment rights by using his photograph; because the prosecution failed to produce key witnesses; and because the evidence is insufficient. For the following reasons, we sua sponte dismiss the petition.

{¶2} In *State ex rel. Patterson, Jr. v. Russo* (Dec. 5, 2003), Cuyahoga App. No. 83621, Patterson sought to overturn Judge Joseph D. Russo's denial of his motion to suppress thereby allowing the prosecution to use a photo array in *State v. Patterson*, Cuyahoga County Court of Common Pleas, Case Nos. 437813, and 436959. In dismissing Patterson's mandamus action, we found that Patterson had an adequate remedy at law by way of appeal.

{¶3} In this matter, we again find that Patterson has a

plain and adequate remedy at law through a direct appeal. *State ex rel. Walker v. Bowling Green* (1994), 69 Ohio St.3d 391, 632 N.E.2d 904; *State ex rel. Baker v. Schiemann* (1993), 67 Ohio St.3d 443, 619 N.E.2d 692; *State ex rel. Kuczak v. Saffold* (1993), 67 Ohio St.3d 123, 616 N.E.2d 230. According to his petition, Patterson's trial is currently scheduled for January 6, 2004. If he is convicted, Patterson has the ability to raise these same issues on direct appeal.

{¶4} Additionally, Patterson 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; *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶5} Accordingly, relator's complaint in mandamus is dismissed sua sponte. Relator to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

{¶6} *Writ dismissed.*

ANNE L. KILBANE, P.J., and TIMOTHY E. MCMONAGLE, J., concur.

