

[Cite as *State ex rel. Whitlow v. Safford*, 2004-Ohio-59.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 83278

| | | |
|--------------------------|---|-----------------|
| STATE OF OHIO, EX REL., | : | ORIGINAL ACTION |
| JERRY WHITLOW | : | |
| | : | JOURNAL ENTRY |
| Relator | : | AND |
| | : | OPINION |
| vs. | : | |
| | : | |
| JUDGE SHIRLEY S. SAFFOLD | : | |
| | : | |
| Respondent | : | |

DATE OF JOURNALIZATION: JANUARY 7, 2004

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Denied.
Order No. 355400
Motion No. 352682

APPEARANCES:

| | |
|--------------|--------------------------|
| For Relator: | JERRY WHITLOW, PRO SE |
| | Inmate No. 434-183 |
| | 2000 S. Avon Belden Road |
| | Grafton, Ohio 44044 |

For Respondent :

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

DIANE KARPINSKI, J. :

{¶1} Relator, pro se, requests that this court compel respondent judge to rule on his motion for jail-time credit filed in *State v. Whitlow*, Cuyahoga County Court of Common Pleas case No. CR-422143 on January 9, 2003.

{¶2} Respondent has filed a motion for summary judgment. Attached to that motion is a copy of a journal entry issued by respondent and received for filing by the clerk on September 17, 2003, in which respondent granted relator nine days jail-time credit. Relator never opposed the motion. Respondent argues that she has discharged her duty. We agree.

{¶3} The complaint is also defective. Although R.C. 2731.04 requires that actions in mandamus must be on relation of the state in the name of the person bringing the action, the caption reads “State of Ohio, ex rel. v. Jerry Whitlow.” (Emphasis added.) Furthermore, R.C. 2969.25 requires that a prisoner file an affidavit describing each civil action or appeal of a civil action which the prisoner filed in the previous five years in any state or federal court and that a prisoner file a certified statement by the prison cashier

setting forth the balance in the prisoner's private account for each of the preceding six months. Although Whitlow appears to support his complaint with an affidavit of prior lawsuits, relator has failed to comply with both of these requirements. Compare *State v. Johnson*, Cuyahoga App. No. 82251, 2003-Ohio-1848.

{¶4} Similarly, relator 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. *State ex rel. Hightower v. Russo*, Cuyahoga App. No. 82321, 2003-Ohio-3679. We also note that relator called his filing "PETITION FOR WRIT OF MANDAMUS MOTION TO COMPEL." An action in mandamus may not be commenced by a motion. *State ex rel. Dept. of Rehab. & Corr. v. Horton*, Cuyahoga App. No. 82705, 2003-Ohio-2755. Each of these defects provides a basis for dismissal of the complaint in mandamus.

{¶5} 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).

{¶6} Writ denied.

DIANE KARPINSKI, JUDGE

ANN DYKE, P.J., and SEAN C. GALLAGHER, J., concur.