

[Cite as *State ex rel. Tate v. Callahan*, 2005-Ohio-1202.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 85615

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
ERIC D. TATE	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
JUDGE KENNETH R. CALLAHAN	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION:	MARCH 14, 2005
CHARACTER OF PROCEEDINGS:	WRIT OF MANDAMUS/PROHIBITION
JUDGMENT:	Writ Denied. Motion No. 368190 Order No. 369110

APPEARANCES:

For Relator:	ERIC TATE, pro se Inmate No. 431-603 P.O. Box 8107 Mansfield, Ohio 44901
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For Respondent:	WILLIAM D. MASON Cuyahoga County Prosecutor BY: KRISTEN LUSNIA Assistant County Prosecutor Justice Center - 9 <sup>th</sup> Floor 1200 Ontario Street Cleveland, Ohio 44113
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Judge Frank D. Celebrezze, Jr.:

{¶ 1} Relator, Eric D. Tate, is the defendant in *State v. Tate*, Cuyahoga County Court of Common Pleas Case No. CR-403489, which is assigned to respondent judge. Relator requests relief in mandamus to compel respondent to rule on Tate's motion to correct sentence filed on Case No. CR-403489 on August 12, 2004. Tate requests relief in prohibition to correct the sentence because he contends that respondent lacked the jurisdiction to enter Tate's sentence without imposing a fine.

{¶ 2} Tate pled guilty to one count of possession of drugs and the court of common pleas nolleed the remaining counts (including preparation of drugs for sale, possession of criminal tools and having a weapon under disability). Respondent imposed a prison sentence of a mandatory 10 years as well as post-release control. Tate argues, however, that the sentence was void because respondent did not impose a mandatory fine.

{¶ 3} Respondent has filed a motion for summary judgment attached to which is a copy of the docket in Case No. CR-403489. The docket reflects that respondent denied Tate's motion to correct sentence by entry received for filing on January 24, 2005. Although Tate now concedes that his request for relief in mandamus is moot, he persists in his contention that he is entitled to relief in prohibition to order the court of common pleas "to correct the sentence entered without statutory jurisdiction." Relator's Reply to Respondents Answer to Original Complaint for

Prohibition. Tate argues that the court of common pleas was patently and unambiguously without jurisdiction to impose a sentence which did not include what Tate refers to as a mandatory fine. He requests that this court issue a writ of prohibition ordering respondent to correct Tate's sentence.

{¶ 4} Prohibition is not appropriate to correct errors. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 78, 1998-Ohio-275, 701 N.E.2d 1002. Despite Tate's arguments to the contrary, his request for relief in prohibition is essentially an effort to use an original action as a substitute for an appeal. As a consequence, we deny Tate's request for relief in prohibition.

{¶ 5} The complaint also manifests various defects. R.C. 2969.25(A) requires that an inmate who commences a civil action must file an affidavit describing each civil action or civil appeal filed within the previous five years. Although Tate did file an "affidavit mandated by R.C. §2969.25," he

**"\* \* \* 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."**

{¶ 6} *State ex rel. Bristow v. Sidoti* (Dec. 1, 2000), Cuyahoga App. No. 78708, at 3-4. Likewise, in this action, we deny relator's 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.

{¶ 7} Tate "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.

{¶ 8} Accordingly, respondent's motion for summary judgment 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 denied.

FRANK D. CELEBREZZE, JR.  
PRESIDING JUDGE

JAMES J. SWEENEY, J., CONCURS

CHRISTINE T. MCMONAGLE, J., CONCURS