

[Cite as *State ex rel. Petway v. Burnside*, 2005-Ohio-280.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 85413

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
DERRICK PETWAY	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
JUDGE JANET BURNSIDE	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: JANUARY 26, 2005

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Dismissed.  
Motion No. 365705

APPEARANCES:

For Relator: DERRICK PETWAY  
2523 East 126<sup>th</sup> Street  
Cleveland, Ohio 44120

For Respondent: WILLIAM D. MASON  
Cuyahoga County Prosecutor  
BY: AMY VENESILE  
Assistant County Prosecutor  
Justice Center - 9<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

DIANE KARPINSKI, J.:

{¶ 1} Derrick Petway has filed a complaint for a writ of mandamus. Petway seeks an order from this court which requires Judge Janet Burnside to provide "the medical records associated with the events" which led to the criminal offense of attempted vandalism (R.C. 2923.02 and R.C. 2909.25) as charged in *State v. Petway*, Cuyahoga County Court of Common Pleas Case No. CR-447851. Judge Burnside has filed a motion to dismiss, which we grant for the following reasons.

{¶ 2} Initially, we find that Petway has failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint must be supported by an affidavit that specifies the details of the claim. The failure of Petway to comply with the supporting affidavit requirement of Loc.App.R. 45(B)(1)(a) requires dismissal of the complaint for a writ of mandamus. *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 3} In addition, Petway's request for a writ of mandamus is moot. Attached to Judge Burnside's motion to dismiss is a copy of judgment entry, as journalized on October 21, 2004, which demonstrates that Petway entered a plea of guilty to the charged offense of attempted vandalism. Petway's request for medical records, in order to aid his defense in the underlying criminal action, is now moot. *State ex rel. Jerningham v. Cuyahoga County*

*Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723, *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163.

{¶ 4} Accordingly, we grant Judge Burnside's motion to dismiss. Costs to Petway. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Dismissed.

DIANE KARPINSKI  
PRESIDING JUDGE

ANTHONY O. CALABRESE, JR., J., CONCURS

MARY EILEEN KILBANE, J., CONCURS