

[Cite as *State ex rel. Williams v. Corrigan*, 2005-Ohio-6092.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 87150

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|--------------------------|---|-----------------|
| STATE OF OHIO, EX REL. | : | ORIGINAL ACTION |
| EUGENE WILLIAMS | : | |
| | : | JOURNAL ENTRY |
| Relator | : | AND |
| | : | OPINION |
| vs. | : | |
| | : | |
| BRIAN J. CORRIGAN, JUDGE | : | |
| | : | |
| Respondent | : | |

DATE OF JOURNALIZATION: NOVEMBER 16, 2005

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Denied.
Motion No. 377405
Order No. 377830

APPEARANCES:

For Relator: EUGENE WILLIAMS, pro se
Inmate No. 434-148
Mansfield Correctional Inst.
P. O. Box 788
Mansfield, Ohio 44901-0788

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

JUDGE SEAN C. GALLAGHER:

{¶ 1} Relator, Eugene Williams, is the defendant in *State v. Williams*, Cuyahoga County Court of Common Pleas Case Nos. CR-423249, 424274 and 425455, which are assigned to respondent judge.

On direct appeal, this court vacated the sentences in those cases and remanded them to the court of common pleas for resentencing. *State v. Williams*, Cuyahoga App. No. 82206, 2003-Ohio-3962.

{¶ 2} Williams avers that, when respondent resentedenced Williams, respondent "failed to correct the improper sentence." Complaint, par 6. In this action in mandamus, relator requests that this court order respondent to correct the sentence or permit relator to withdraw his guilty pleas.

{¶ 3} Respondent has filed a motion for summary judgment attached to which are copies of the entries resentencing Williams and denying his motion to withdraw guilty plea in Case No. CR-423249. Unfortunately, respondent's counsel did not attach the comparable entries which were issued in Case Nos. CR-424274 and 425455 as well. Nevertheless, the dockets in Case Nos. CR-424274 and 425455 reflect that respondent has resentedenced Williams and denied his motions to withdraw his guilty pleas in those cases as well.

{¶ 4} In *State ex rel. Farraj v. State*, Cuyahoga App. No. 85109, 2004-Ohio-5377, Farraj requested that this court issue a writ of mandamus compelling the respondent to run his sentences in

the two underlying cases concurrently. This court observed that Farraj did not appeal the resentencing and held, inter alia, that a delayed appeal was an adequate remedy. As a consequence, the respondent's motion for summary judgment was granted and judgment was entered against Farraj.

{¶ 5} As was the case in *Farraj*, Williams has not appealed the resentencing. Williams may, therefore, seek a delayed appeal in this court. The availability of an adequate remedy in the ordinary course of the law requires that we deny the request for relief in mandamus.

{¶ 6} 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 Williams did file an affidavit "pursuant to 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."

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. 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.

{¶ 7} 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.

SEAN C. GALLAGHER
JUDGE

PATRICIA A. BLACKMON, A.J., CONCURS

JAMES J. SWEENEY, J., CONCURS