

[Cite as *Thomas v. McGinty*, 2005-Ohio-6481.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 87051

WILLIE THOMAS	:	ORIGINAL ACTION
	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
HON. TIMOTHY MCGINTY, JUDGE	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: DECEMBER 8, 2005

CHARACTER OF PROCEEDINGS: WRIT OF PROHIBITION/MANDAMUS

JUDGMENT: Complaint Dismissed.  
Order No. 377643

APPEARANCES:

For Relator:	ROBERT L. TOBIK
	Chief Public Defender
	By: JOHN T. MARTIN
	Assistant Public Defender
	1200 West Third Street
	100 Lakeside Place
	Cleveland, Ohio 44113

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

JUDGE DIANE KARPINSKI:

{¶ 1} Willie Thomas has filed a complaint for a writ of prohibition/mandamus. He seeks an order from this court to prevent Judge Timothy McGinty "from entering a judgment of conviction against Petitioner for the crime of theft, a first-degree misdemeanor," in the underlying action of *State v. Thomas*, Cuyahoga County Court of Common Pleas Case No. CR-429294. Thomas also seeks "a writ of mandamus directing Judge McGinty to enter an order in CR-429294 that (1) vacates Petitioner's prior conviction for robbery in that case, (2) dismisses the indictment in that case, and (3) discharges the Petitioner." For the following reasons, we sua sponte dismiss Thomas' complaint for a writ of prohibition/mandamus.

{¶ 2} Initially, we find that Thomas' complaint for a writ of prohibition/mandamus is defective since it is improperly captioned.

A complaint for a writ of prohibition/mandamus must be brought in the name of the state, on relation of the person applying. The failure of Thomas to properly caption his complaint for a writ of prohibition/mandamus warrants dismissal. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Judge Cleary* (Jan. 11. 2001), Cuyahoga App. No. 78763.

{¶ 3} Thomas has also failed to comply with R.C. 2969.25, which requires the Petitioner to attach to the complaint for a writ of prohibition/mandamus an affidavit that describes each civil action

or appeal filed within the previous five years in any state or federal court. Thomas' failure to comply with R.C. 2969.25 separately warrants the dismissal of the complaint for a writ of prohibition/mandamus. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

{¶ 4} We also note that Thomas has failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint be supported by an affidavit which specifies the details of the claim.

The failure of Thomas to comply with the supporting affidavit provision of Loc.App.R. 45(B)(1)(a) further requires dismissal of the complaint for a writ of prohibition/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.

{¶ 5} Finally, a review of the docket in the underlying criminal action discloses that Judge McGinty resentenced Thomas on October 22, 2005, and that an appeal was immediately filed with this court. See *State v. Thomas*, Cuyahoga App. No. 87201. Thus Thomas' request for a writ of prohibition/mandamus is 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.

{¶ 6} Accordingly, we sua sponte dismiss Thomas' complaint for

a writ of prohibition/mandamus. Costs to Thomas. 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).

Complaint dismissed.

DIANE KARPINSKI  
JUDGE

COLLEEN CONWAY COONEY, P.J., CONCURS

KENNETH A. ROCCO, J., CONCURS