

[Cite as *State ex rel. Nicholson v. Russo*, 2006-Ohio-3002.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 87980

THOMAS NICHOLSON, STATE OF	:	ORIGINAL ACTION
OHIO, EX REL.	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
JUDGE JOHN RUSSO	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: JUNE 14, 2006

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Denied.
Motion No. 383332
Order No. 384955

APPEARANCES:

For Relator: THOMAS NICHOLSON, pro se
Inmate No. 440-566
Mansfield Correctional Inst.
P.O. Box 788
Mansfield, Ohio 44901

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

JUDGE DIANE KARPINSKI:

{¶ 1} Thomas Nicholson has filed a complaint for a writ of mandamus. On February 13, 2004, Nicholson filed an "amended petition for post-conviction relief and motion for evidentiary hearing" in *State v. Nicholson*, Cuyahoga County Court of Common Pleas Case No. CR-422675. From this court, Nicholson seeks an order requiring Judge John Russo to issue findings of fact and conclusions of law with regard to the amended petition for post-conviction relief. Judge Russo has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} Initially, we find that Nicholson has failed to comply with R.C. 2969.25, which requires that an affidavit be attached to the complaint for a writ of mandamus and that the affidavit describe each civil action or appeal filed within the previous five years in any state or federal court. Nicholson's failure to comply with the requirements of R.C. 2969.25 warrants the dismissal of the complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 68 N.E.2d 1242.

{¶ 3} In addition, Nicholson's complaint for a writ of mandamus is moot. Attached to Judge Russo's motion for summary judgment is a copy of Judge Russo's findings of fact and conclusions of law, as issued with regard to the "amended petition for post-conviction

relief and motion for evidentiary hearing." Judge Russo has discharged his duty, with regard to the need for findings of fact and conclusions of law. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 278, 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 Russo's motion for summary judgment. Costs to Judge Russo. It is further ordered that the Clerk of the Eighth District Court of Appeals serve upon all parties notice of this judgment as required by Civ.R. 58(B).

Writ denied.

DIANE KARPINSKI
PRESIDING JUDGE

SEAN C. GALLAGHER, J., CONCURS

KENNETH A. ROCCO, J., CONCURS