

[Cite as *State ex rel. Marich v. McFaul*, 2008-Ohio-2161.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 90882**

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**STATE OF OHIO, EX REL.,  
MICHAEL ALLEN MARICH**

RELATOR

VS.

**GERALD T. MCFAUL, SHERIFF**

RESPONDENT

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**JUDGMENT:  
COMPLAINT DISMISSED**

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WRIT OF MANDAMUS  
MOTION NO. 405366, and 406023  
ORDER NO. 406307

**RELEASE DATE:** March 4, 2008

**FOR RELATOR:**

Michael Allen Marich, pro se  
Inmate No. 521-305  
Marion Correctional Inst.  
P.O. Box 57  
Marion, Ohio 43301-0057

**ATTORNEYS FOR RESPONDENT:**

William D. Mason  
Cuyahoga County Prosecutor  
By: T. Allan Regas  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

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CHRISTINE T. MCMONAGLE, J.:

{¶ 1} Michael Allen Marich, the relator, has filed a complaint for a writ of mandamus. Marich seeks an order from this court, which requires Gerald T. McFaul, the Cuyahoga County Sheriff, the respondent, to calculate and forward to the Ohio Dept. of Rehabilitation and Correction, an order which provides that he is entitled to 78 days of pre-conviction jail time credit in the underlying case of *State v. Marich*, Cuyahoga County Court of Common Pleas Case No. CR-488777. McFaul has filed a motion to dismiss and a supplemental motion to dismiss, which we grant for the following reasons.

{¶ 2} Initially, we find that Marich has failed to comply with the requirements of R.C. 2969.25, which requires the attachment of an affidavit to the complaint for a writ of mandamus that describes each civil action or appeal filed within the previous five years in any state or federal court. Marich's failure to comply with 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-421, 696 N.E.2D 594; *Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

{¶ 3} In addition, Marich has failed to establish that he is entitled to a writ of mandamus. In order for this court to issue a writ of mandamus, Marich must affirmatively establish each prong of the following three-part test: (1) Marich possesses a clear legal right to the requested relief; (2) Marich possesses a clear legal duty; and (3) there exists no other adequate remedy in the ordinary exercise of

the law. *State ex rel. Natl. City Bank v. Bd. of Edn.* (1977), 52 Ohio St.2d 81, 369 N.E.2d 1200; *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 374 N.E.2d 641. Moreover, mandamus is an extraordinary remedy which is to be exercised with great caution and only when the right is clear. Mandamus will not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Connoles v. Cleveland Bd. Of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850.

{¶ 4} Although Marich possesses a clear legal right to pre-conviction jail time credit in *State v. Marich*, supra, McFaul does not possess any legal duty to calculate pre-conviction jail time credit or forward any calculation to the Ohio Dept. of Rehabilitation and Corrections. R.C. 2949.08 and 2949.12; *State ex rel. Griffin v. McFaul*, Cuyahoga App. No. 84360, 2004-Ohio-3863. To the contrary, it is the trial court that possesses the clear legal duty to calculate the amount of pre-conviction jail time credit and also possesses the clear legal duty to specify in the record of conviction and sentence the amount of pre-conviction jail time credit vis-a-vis a properly executed journal entry. *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 589 N.E.2d 113; *State ex rel. Johnson v. O'Donnell* (Oct. 4, 1994), Cuyahoga App. No. 67783; *State ex rel. Andrews v. Corrigan* (Oct. 11, 1991), Cuyahoga App. No. 62253; *State ex rel. Summers v. Saffold*, Cuyahoga App. No. 82546, 2003-Ohio-3542; *State ex rel. Leslie v. Angelotta* (Aug. 30, 1995), Cuyahoga App. No. 69329; and *State ex rel. Montgomery v. Jones* (Nov. 25, 1998), Cuyahoga

App. No. 75161. Thus, Marich has failed to state a claim upon which relief can be granted. *State ex rel. Peebles v. Anderson*, 73 Ohio St.3d 559, 1995-Ohio-335, 653 N.E.2d 371.

{¶ 5} Finally, we find that Marich’s request for a writ of mandamus is moot. Attached to McFaul’s supplemental motion to dismiss is a copy of a journal entry, as journalized on February 15, 2008, which demonstrates that Marich has been granted pre-conviction jail time credit in the amount of 78 days and that a copy of the journal entry has been ordered sent to the “Bureau of Sentence Computation; P.O. Box 540, Orient, Ohio 43146.” The trial court has discharged its duty per R.C. 2949.08 and 2949.12 and Marich is not entitled to a writ of mandamus vis-a-vis his request for the pre-conviction jail time credit. *State ex rel. Grove v. Nadel*, 84 Ohio St.3d 252, 1998-Ohio-624, 703 N.E.2d 304; *State ex rel. Konoff v. Shafer*, 80 Ohio St.3d 294, 1997-Ohio-119, 685 N.E.2d 1248.

{¶ 6} Accordingly, we grant McFaul’s original motion to dismiss and the supplemental motion to dismiss. Costs waived. 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.

CHRISTINE T. MCMONAGLE, JUDGE

JAMES J. SWEENEY, A.J., and

SEAN C. GALLAGHER, J., CONCUR