

[Cite as *Jones v. Sutula*, 2008-Ohio-2777.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 91296**

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**CLIFFORD JONES**

RELATOR

VS.

**JUDGE JOHN SUTULA, ET AL.**

RESPONDENTS

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**JUDGMENT:  
WRIT DENIED**

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WRIT OF MANDAMUS  
MOTION NO. 408499  
ORDER NO. 409400

**RELEASE DATE:** June 3, 2008

[Cite as *Jones v. Sutula*, 2008-Ohio-2777.]

**FOR RELATOR:**

Clifford Jones, pro se  
Inmate No. 0127948  
Cuyahoga County Jail  
P.O. Box 5600  
Cleveland, Ohio 44101

**ATTORNEYS FOR RESPONDENTS:**

**For State of Ohio:**

Nancy Hardin Rogers  
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30 East Broad St., 26th Floor  
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**For Judge John Sutula:**

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

[Cite as *Jones v. Sutula*, 2008-Ohio-2777.]  
COLLEEN CONWAY COONEY, J.:

{¶ 1} Clifford Jones, the relator, has filed a complaint for a writ of mandamus, seeking an order from this court to require respondent Judge John Sutula to render rulings on all pending pretrial motions in *State v. Jones*, Cuyahoga County Court of Common Pleas Case No. CR-483520. Judge Sutula has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} Initially, we find that Jones' complaint for a writ of mandamus is defective, because it is improperly captioned. A complaint for a writ of mandamus must be brought in the name of the state, on relation of the person applying. The failure of Jones to properly caption his complaint for a writ of mandamus warrants dismissal. R.C. 2731.04; *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382; *Gannon v. Gallagher* (1945) 145 Ohio St. 170; 60 N.E.2d 666; *Dunning v. Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

{¶ 3} Jones has also failed to comply with 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. Jones' failure to comply with R.C. 2969.25 requires the dismissal of his 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, 685 N.E.2d 1242.

{¶ 4} In addition, Jones has failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint for a writ of mandamus be supported by a sworn affidavit that specifies the details of his claim. The failure of Jones to comply with the supporting affidavit requirement of Loc.App.R. 45(B)(1)(a) requires the dismissal of his 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.

{¶ 5} Finally, Jones’ request for a writ of mandamus is moot. Attached to Judge Sutula’s motion for summary judgment is a copy of a judgment entry, journalized on April 21, 2008, in the underlying case, which demonstrates that Jones pled guilty to the charged offenses of attempted rape, gross sexual imposition, kidnapping, rape, aggravated robbery, aggravated menacing, and aggravated burglary. Any pending motion, upon the entry of the guilty plea, is “deemed to be denied.” *State v. Whitaker*, Cuyahoga App. No. 83824, 2004-Ohio-5016, ¶2. See, also, *Jarrett v. Cuyahoga Cty. Court of Common Pleas*, Cuyahoga App. No. 87232, 2006-Ohio-2220.

{¶ 6} Accordingly, we grant Judge Sutula’s motion for summary judgment. Costs to Jones. 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).

Writ denied.

COLLEEN CONWAY COONEY,  
PRESIDING JUDGE

KENNETH A. ROCCO, J., and  
MELODY J. STEWART, J., CONCUR