

[Cite as *Caldwell ex rel. v. State*, 2008-Ohio-5098.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91880

CALDWELL, E., EX REL.,

RELATOR

vs.

STATE OF OHIO

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 412462
ORDER NO. 413592

RELEASE DATE: September 30, 2008

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FOR RELATOR:

Elvert Caldwell, pro se
Inmate No. 356-910
Grafton Correctional Inst.
2500 South Avon Belden Road
Grafton, Ohio 44044

ATTORNEY FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

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KENNETH A. ROCCO, P.J.:

{¶ 1} Elvert Caldwell has filed a complaint for a writ of mandamus, through which he seeks an order that compels the Cuyahoga County Court of Common Pleas to grant judicial release. Specifically, Caldwell argues that the failure to comply with a plea agreement, as allegedly negotiated in *State v. Caldwell*, Cuyahoga County Court of Common Pleas Case No. CR-357191, mandates his release from prison after serving seven years of incarceration. For the following reasons, we grant the motion for summary judgment, as filed on behalf of the Cuyahoga County Court of Common Pleas, and decline to issue a writ of mandamus.

{¶ 2} Initially, we find that Caldwell's complaint for a writ of mandamus is defective, since 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 Caldwell 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} It must also be noted that Caldwell 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 Caldwell 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* (Jul. 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 4} Finally, we find that Caldwell has failed to establish that he is entitled to a writ of mandamus. In order for this court to issue a writ of mandamus, Caldwell must establish that: (1) he possesses a clear right to judicial release from prison; (2) the Cuyahoga County Court of Common Pleas possesses a clear legal duty to grant judicial release; and (3) there exists no other adequate remedy in the ordinary course of the law. Herein, Caldwell argues, inter alia, that a sentencing agreement, as entered into prior to his plea of guilty to the offenses of rape and disseminating matter harmful to a juvenile, requires his release from prison after serving seven years of incarceration.

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{¶ 5} Caldwell, through his complaint for a writ of mandamus, has failed to establish that he possesses a clear right to judicial release as premised upon an alleged plea agreement. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914; *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119. In addition, the Cuyahoga County Court of Common Pleas possesses no duty to grant judicial release, since Caldwell is ineligible for judicial release. See R.C. 2929.20(A). Finally, Caldwell possesses an adequate remedy at law by filing a delayed appeal with regard to his allegation of a breached plea agreement. *State ex rel. Gadsen v. Lioi, Judge*, 93 Ohio St.3d 574, 2001-Ohio-1611, 757 N.E.2d 355; *Grundstein v. Judge Carroll*, Cuyahoga App. No. 83885, 2004-Ohio-2346.

{¶ 6} Accordingly, we grant the motion for summary judgment as filed on behalf of the Cuyahoga County Court of Common Pleas. Costs to Caldwell. 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.

KENNETH A. ROCCO,
PRESIDING JUDGE

ANN DYKE, J., and
FRANK D. CELEBREZZE, JR., J.,
CONCUR