

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92993

**STATE, EX REL.,
DARIES SHERRILLS**

RELATOR

VS.

JUDGE RICHARD MCMONAGLE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 420388
ORDER NO. 421674

RELEASE DATE: May 18, 2009

FOR RELATOR:

Daries Y. Sherrills, pro se
Inmate No. 206-377
Marion Correctional Inst.
P.O. Box 57
Marion, Ohio 43301-0057

ATTORNEYS FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor

By: James Moss
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

JUDGE MARY J. BOYLE:

{¶ 1} On March 31, 2009 relator Daries Sherrills filed a writ of mandamus against Judge Richard McMonagle asking this court to order Judge McMonagle to grant discovery and his request for production of documents related to his motions for post-conviction relief. On April 2, 2009 the respondent, thru the Cuyahoga County Prosecutor's Office, filed a motion for summary judgment which was opposed by Sherrills. For the following reasons, we grant the motion for summary judgment.

{¶ 2} Initially we find that the petition for a writ of mandamus is fatally defective since it fails to comply with Loc.App.R. 45(B)(1)(a) which mandates that the complaint be supported by an affidavit from the plaintiff or relator which specifies the details of the claim. The failure to comply with the supporting affidavit provision of Loc.App.R. 45(B)(1)(a) subjects the complaint to dismissal. *State ex rel. Owens v. McCormick* (Feb. 18, 1999), Cuyahoga App. No. 75515.

{¶ 3} Despite the above procedural defect, in order for this court to issue a writ of mandamus, a relator must establish that: 1) the relator possesses a clear legal right to the relief prayed; 2) the respondent possesses a clear legal duty to perform the requested act; and 3) the relator possesses no plain and adequate remedy in the ordinary course of the law. *State ex rel. Manson v. Morris* (1993), 66 Ohio St. 3d 440, 613 N.E.2d 232, citing *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St. 3d 28, 451 N.E.2d 225. Although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehause* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914.

{¶ 4} Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not be issued in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Commission* (1953), 159 Ohio St.

581, 113 N.E.2d 14; *State ex rel. Cannole v. Cleveland Board of Education* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850.

{¶ 5} Additionally, if a relator had an adequate remedy at law, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108; *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86; *State ex rel. Provolone Pizza, LLC. v. Callahan*, Cuyahoga App. No. 88626, 2006-Ohio-660; *State ex rel. Grahek v. McCafferty*, Cuyahoga App. No. 88614, 2006-Ohio-4741.

{¶ 6} The filings indicate that Sherrills was convicted of robbery and aggravated burglary. Both convictions were subsequently affirmed by this court. See *State v. Sherrills* (Mar. 17, 1988), Cuyahoga App. No. 53535; and *State v. Sherrills* (Apr. 7, 1977), Cuyahoga App. No. 35912. On February 19, 2009 Sherrills filed a motion for discovery in both lower court matters which were denied by Judge McMonagle on March 6, 2009. Sherrills then filed additional motions for discovery and requests for production of documents which were denied by Judge McMonagle on March 16, 2009. Sherrills then filed this mandamus action claiming that under the new open discovery rules set forth by the Cuyahoga County Court of Common Pleas that he has a right to the discovery.

{¶ 7} However, as pointed out by respondent, there is no requirement for civil discovery in postconviction proceedings. *State ex rel. Love v. Cuyahoga County*

Prosecutor's Office, 87 Ohio St.3d 158, 1999-Ohio-314, 718 N.E.2d 426. See also *State v. Foust*, Cuyahoga App. No. 83771, 2005-Ohio-5331; *State v. Taylor*, Cuyahoga App. No. 80271, 2002-Ohio-2742. Consequently Sherrills failed to establish the first two prongs of mandamus. Additionally, we also find that Sherrills possessed an adequate remedy at law by way of appeal. While the time period to appeal Judge McMonagle's rulings have passed, Sherrill's failure to appeal those rulings also prohibits us from granting the action in mandamus.

{¶ 8} Accordingly, since Sherrills cannot establish the necessary criteria for this court to grant his mandamus action, we grant the respondent's motion for summary judgment. Relator to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ denied.

MARY J. BOYLE, JUDGE

SEAN C. GALLAGHER, P.J., and
PATRICIA A. BLACKMON, J., CONCUR