

[Cite as *State ex rel. Sherrills v. Terry*, 2009-Ohio-2588.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93251

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

RELATOR

VS.

JUDGE STEVEN TERRY

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 421995
ORDER NO. 422321

RELEASE DATE: May 29, 2009

FOR RELATOR:

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

ATTORNEY FOR RESPONDENT:

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

MARY J. BOYLE, J.:

{¶ 1} On May 4, 2009, relator Daries Sherrills filed a writ of mandamus against Judge Steven Terry asking this court to order Judge Terry to grant discovery and his request for production of documents in *State v. Sherrills*, Cuyahoga County Court of Common Pleas, Case Nos. CR-022530, CR-021925, CR-211992 and CR-211474, in order to submit motions for postconviction relief. On May 12, 2009 the respondent, through the Cuyahoga County Prosecutor's Office, filed a motion for summary judgment. For the following reasons, we grant the motion for summary judgment and deny the writ.

{¶ 2} 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. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914.

{¶ 3} 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 Comm.* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Cannole v. Cleveland Bd. of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850.

{¶ 4} 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-6600; *State ex rel. Grahek v. McCafferty*, Cuyahoga App. No. 88614, 2006-Ohio-4741.

{¶ 5} A review of the filings indicate that Judge Terry, in Case Nos. CR-211474 and CR-211992, denied Sherrills's request for production of documents on March 16, 2009. Regarding Case Nos. CR-022530 and CR-021925, however, the matters are not before Judge Terry but rather Judge Richard McMonagle. Accordingly, Judge Terry has never ruled on those two motions for production of documents.¹

{¶ 6} As argued by respondent, there is no requirement for civil discovery in postconviction proceedings. *State ex rel. Love v. Cuyahoga Cty. 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; and *State v. Sherrills*, Cuyahoga App. No. 93069, 2009-Ohio-2273. Furthermore, Sherrills does not possess a right, nor does Judge Terry have a clear legal duty, to rule on matters which are not before him. 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 Terry's rulings have passed, Sherrills's failure to appeal those rulings also prohibits us from granting the action in mandamus.

¹ Judge McMonagle denied Sherrills's request for production of documents in Case Nos. CR-021925 and CR-022530 on March 16, 2009.

{¶ 7} 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

COLLEEN CONWAY COONEY, A.J., and
PATRICIA A. BLACKMON, J., CONCUR