

[Cite as *State ex rel. Crosswhite v. McMonagle*, 2009-Ohio-2697.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93130**

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**STATE OF OHIO, EX REL.,  
DONALD CROSSWHITE**

RELATOR

VS.

**JUDGE TIMOTHY MCMONAGLE**

RESPONDENTS

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**JUDGMENT:  
WRIT DENIED**

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WRIT OF MANDAMUS  
MOTION NO. 421701  
ORDER NO. 422766

**RELEASE DATE:** June 9, 2009

**FOR RELATOR:**

Donald Crosswhite, pro se  
Inmate No. 463-926  
Hocking Correctional Facility  
P.O. Box 59  
Nelsonville, Ohio 45764

**ATTORNEY FOR RESPONDENT:**

William D. Mason  
Cuyahoga County Prosecutor

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

SEAN C. GALLAGHER, P.J.:

{¶ 1} On April 1, 2009, the relator, Donald Crosswhite, commenced this mandamus action against the respondent, Judge Timothy McMonagle, to compel the judge to grant him the proper amount of jail time credit, which Crosswhite asserts to be 827 days, in the underlying cases, *State of Ohio v. Donald Crosswhite*, Cuyahoga County Common Pleas Court Case Nos. CR-454733 and 458947. On May 4, 2009, the respondent judge, through the Cuyahoga County Prosecutor, moved for summary judgment because of mootness and various procedural defects. On May 22, 2009, Crosswhite filed a brief in opposition. For the following reasons, this court

grants the judge's motion for summary judgment and denies the application for a writ of mandamus.

{¶ 2} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial 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. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Industrial Comm. of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus. Thus, mandamus does not lie to correct errors in the course of a case. *State ex rel. Tommie Jerningham v. Judge Patricia Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787. Furthermore, if the relator had an adequate remedy, 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 and *State ex rel. Boardwalk Shopping Center, Inc. v. Court of Appeals for Cuyahoga County* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86.

{¶ 3} Attached to the motion for summary judgment are certified copies of May 4, 2009 journal entries in which the respondent judge in each of the underlying

cases granted a combined jail time credit of 478 days for the two cases. Thus, the judge has exercised his discretion by granting a specified amount of jail time credit and has fulfilled his duty. If the relator believes the rulings are incorrect, he has or had a remedy by means of appeal. *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 589 N.E.2d 113 and *State ex rel. Campbell v. Judge Corrigan* (Sept. 20, 2001), Cuyahoga App. No. 79525, unreported. Thus, this mandamus action is moot.

{¶ 4} Additionally, the relator failed to support his complaint with an affidavit “specifying the details of the claim” as required by Loc.R. 45(B)(1)(a). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077, unreported and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899, unreported.

{¶ 5} The relator has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the relator within the previous five years in any state or federal court. Relator did file an affidavit of verity listing any matter filed in the last six months, but that does not satisfy the requirements of the statute. The relator’s failure to comply with R.C. 2969.25 warrants dismissal of the complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Board* (1998), 82 Ohio St.3d 421, 696 N.E.2d 594 and *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285, 685 N.E.2d 1242. Relator also did not comply with R.C. 2969.25(C) which requires that an inmate file a certified statement

from his prison cashier setting forth the balance in his private account for each of the preceding six months. Crosswhite filed a poverty affidavit, but did not attach a statement from the prison cashier. This also is sufficient reason to deny the mandamus, deny indigency status, and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842 and *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420.

{¶ 6} Accordingly, the court denies the writ. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

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SEAN C. GALLAGHER,  
PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and  
MARY J. BOYLE, J., CONCUR