

[Cite as *Moore v. State*, 2009-Ohio-2732.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92726

IN RE: TERRANCE MOORE

RELATOR

VS.

S/O, CUYAHOGA CTY. CLERK OF COURTS

RESPONDENTS

**JUDGMENT:
COMPLAINT DISMISSED**

WRIT OF MANDAMUS
MOTION NO. 418731
ORDER NO. 422388

RELEASE DATE: June 8, 2009

FOR RELATOR:

Terrance Moore, pro se
Inmate No. 480-096
Marion Correctional Inst.
P.O. Box 57
Marion, Ohio 43301

ATTORNEYS FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor

By: T. Allan Regas
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA A. BLACKMON, J.:

{¶ 1} Relator, Terrance Moore, is the defendant in *State v. Moore*, Cuyahoga County Court of Common Pleas Case Nos. CR-427648 and 445445, Court of Appeals Case Nos. 85825, 85826, 85828 and 92654 (pending). Several audiotapes were used in the proceedings in the underlying case. Moore complains that the office of the Clerk of Courts has failed to provide him with an audible version of the “November 2, 2003 side A tape.” Attached to the complaint is extensive correspondence between Moore and the clerk’s office in which the clerk’s office acknowledges that the tape is misfiled.

{¶ 2} Moore requests that this court issue a writ of mandamus compelling respondent clerk “to locate and file in, the Original audible November 2, 2003 side A tape that they have openly admitted to as misfiling, and or completely losing.” Complaint, introductory paragraph (capitalization and punctuation in original).

{¶ 3} Respondent has filed a motion to dismiss. Moore has not responded to the motion to dismiss. For the reasons stated below, we dismiss this action.

{¶ 4} Moore bases his entire action on the assumption that side A of the November 2, 2003 tape is not in the record. In fact, a review of the record in Case No. 85828 reflects that the November 2, 2003 tape is in the record, marked as State’s Exhibit #42, and is audible.¹ “It is well-established that the extraordinary writ of mandamus ‘* * * will not issue to compel a public official to perform a legal duty which has been completed.’ *State ex rel. Breaux, v. Court of Common Pleas* (1977), 50 Ohio St.2d 164 [4 O.O.3d 352], citing *State ex rel. Bowman v. Asmann* (1925), 113 Ohio St. 394.”² Clearly, respondent clerk has discharged his duty to maintain the audiotape exhibit as part of the record in

¹ As part of this court’s consideration of Moore’s application for reopening, this court reviewed the record regarding the November 2, 2003 tape and conversation. *State v. Moore*, Cuyahoga App. No. 85828, 2006-Ohio-277, remanded to the court of appeals for further consideration in 117 Ohio St.3d 69, 2008-Ohio-501, 881 N.E.2d 860, conviction affirmed, sentence vacated and case remanded for resentencing in 2008-Ohio-2359, reopening disallowed 2008-Ohio-6658, at ¶11-12.

Moore’s appeal. Likewise, Moore does not have a clear legal right to compel an act which has been completed.

{¶ 5} Additionally, Moore has or had an adequate remedy in the ordinary course of the law. That is, Moore could raise or could have raised any concerns regarding any items he believed to be missing from the record as part of an appeal.³ As a consequence, Moore has failed to satisfy any of the requirements for relief in mandamus.⁴

{¶ 6} We also note that Moore has failed to comply with the requirement that a complaint in mandamus be “in the name of the state on the relation of the person applying.”⁵ Moore’s failure to caption his complaint properly provides an additional basis for dismissal.⁶

{¶ 7} Accordingly, respondent's motion to dismiss is granted. 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).

Complaint dismissed.

² *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163, at 5.

³ App.R. 9(E) provides a means for correcting or modifying the record with regard to items that are missing or misstated.

⁴ See *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 42, 374 N.E.2d 641.

⁵ R.C. 2731.04.

⁶ *Stewart v. Ohio*, Cuyahoga App. No. 92515, 2009-Ohio-482, at ¶3.

PATRICIA A. BLACKMON,
PRESIDING JUDGE

ANN DYKE, J., and
MARY J. BOYLE, J., CONCUR