

[Cite as *State ex rel. Ponsky v. Sheehan*, 2009-Ohio-3068.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93290

**STATE OF OHIO, EX REL.,
JERRY PONSKY**

RELATOR

VS.

JUDGE BRENDAN J. SHEEHAN

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 422722
ORDER NO. 423078

RELEASE DATE: June 22, 2009

FOR RELATOR

Jerry Ponsky, pro se
Inmate No. 552-147
Marion Correctional Inst.
P.O. Box 57
Marion, Ohio 43301

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

BY: James E. Moss
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
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COLLEEN CONWAY COONEY, A.J.:

{¶ 1} On May 13, 2009, relator, Jerry Ponsky, commenced this mandamus action against respondent, Judge Judith Kilbane-Koch, to compel her to rule on his motion for jail-time credit in *State v. Ponsky*, Cuyahoga County Court of Common Pleas Case No. CR-494527, which was filed on February 19, 2009. On June 2, 2009, Judge Brendan Sheehan,¹ through the Cuyahoga County Prosecutor's office, filed a motion for summary judgment. For the following reasons, we grant the motion for summary judgment.

¹ Judge Sheehan was the successor to Judge Kilbane-Koch's docket.

{¶ 2} Initially we find that Ponsky failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint be supported by an affidavit that specifies the details of the claim. Attaching an affidavit that merely avers that relator has, “read the foregoing complaint and the statements and averments therein contained are true,” does not specify the details of the claim. *State ex rel. Pecsí v. Jones* (Mar. 16, 2000), Cuyahoga App. No. 77464; see, also, *State ex rel. White v. Suster* (Aug. 3, 2000), Cuyahoga App. No. 77894. This failure to comply with the supporting affidavit provision of Loc.App.R. 45(B)(1)(a) requires dismissal of the complaint for a writ of mandamus. *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 3} We also find that the petition for a writ of mandamus is fatally defective because Ponsky failed to comply with R.C. 2969.25, which mandates that he attach an affidavit to his complaint that describes each civil action or appeal of a civil action filed in the previous five years. The failure to provide such an affidavit constitutes sufficient grounds for dismissal of the relator’s complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 2008-Ohio-218, 696 N.E.2d 594; *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

{¶ 4} Nevertheless, attached to the motion for summary judgment is the judgment entry signed by Judge Sheehan that denied Ponsky’s motion for jail-time

credit. Thus, Ponsky's request for a writ of mandamus is moot. *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163; *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723.

{¶ 5} Accordingly, we grant the motion for summary judgment and deny Ponsky's petition for a writ of mandamus. Costs to relator. 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.

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

KENNETH A. ROCCO, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR