

[Cite as *State ex rel. Myrieckes v. Gallagher*, 2009-Ohio-3272.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93477

**STATE OF OHIO, EX REL.,
TERRANCE MYRIECKES
Myrieckes**

RELATOR

VS.

EILEEN A. GALLAGHER

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

WRIT OF MANDAMUS

ORDER NO. 423423

RELEASE DATE: June 29, 2009

FOR RELATOR

Terrance Myrieckes, pro se
Inmate No. 563-638
Belmont Correctional Inst.
P.O. Box 540
St. Clairsville, Ohio 43950

ATTORNEY FOR RESPONDENT

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

MARY J. BOYLE, J.:

{¶ 1} Relator, Terrance Myrieckes, requests that this court compel respondent judge to dispose of his motion for jail-time credit filed in *State v. Myrieckes*, Cuyahoga County Court of Common Pleas Case No. CR-508017 on April 30, 2009.

{¶ 2} A review of the docket in Case No. CR-508017 reflects that, in a journal entry received for filing by the clerk on June 19, 2009, respondent granted the motion and ordered that Myrieckes receive 213 days of jail-time credit. As a consequence, this action is moot. *State ex rel. Collins v. Gaul*, Cuyahoga App. No. 93107, 2009-Ohio-2889.

{¶ 3} Additionally, we note that this action was filed on June 17, 2009, 48 days after the filing of the motion for jail-time credit. “Sup.R. 40(A)(3) provides that motions shall be ruled upon within 120 days from the date of filing. Thus, a complaint in mandamus to compel a ruling on a motion which has been pending less than that time is premature. *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas* (1992), 83 Ohio App.3d 684, 615 N.E.2d 689 and *State ex rel. Byrd v. Fuerst* (July 12, 1991), Cuyahoga App. No. 61985.” *State ex rel. Smith v. Suster*, Cuyahoga App. No. 89031, 2007-Ohio-89, at ¶2 (dismissing an action in mandamus). Obviously, the filing of this action is premature.

{¶ 4} Myrieckes has also failed to comply with the requirements for supporting his request for indigency status. “Although [relator] has filed an affidavit listing the civil actions which he has filed within the last five years, he has otherwise failed to ‘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. This is also sufficient reason to deny the writ, deny indigency status, and assess costs against the petitioner. *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 County Court of Common Pleas*, 88 Ohio St.3d 176, 2000 Ohio 285, 724 N.E.2d 420.’ *James v. Callahan*, Cuyahoga App. No. 89654, 2007 Ohio 2237, at ¶4.” *Smith v. Synenberg*, Cuyahoga App. No. 92774, 2009-Ohio-728, at ¶5. Although Myrieckes avers in his “Affidavit per R.C. _ 2969.25(C)” that the cashier’s

statement is attached to the complaint, his complaint and attachments filed in this court do not include the cashier's statement.

{¶ 5} Accordingly, we dismiss this action sua sponte. 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.

MARY J. BOYLE, JUDGE

SEAN C. GALLAGHER, P.J., and
LARRY A. JONES, J., CONCUR