

[Cite as *Ford v. State*, 2009-Ohio-5970.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93745

BENNIE FORD

RELATOR

VS.

STATE OF OHIO, ET AL.

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 425536
ORDER NO. 427693

RELEASE DATE: November 10, 2009

FOR RELATOR

Bennie Ford, pro se
#30105160
FCI Marianna
Federal Correctional Institution
P.O. Box 7007
Marianna, FL 32447-7007

ATTORNEYS FOR RESPONDENTS

William D. Mason
Cuyahoga County Prosecutor

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

LARRY A. JONES, J.:

{¶ 1} On August 10, 2009, the relator, Bennie Ford, commenced this mandamus action to compel the Cuyahoga County Common Pleas Court or its Clerk of Court to correct a journal entry by deleting a sexual motivation specification.¹ On August 21, 2009, the respondents, through the Cuyahoga County Prosecutor, moved for summary judgment on the grounds of mootness and procedural defects. Ford has not filed a response. Accordingly, this court grants the respondents' motion for summary judgment and denies the application for a writ of mandamus.

¹ The case caption names the respondents as “ State of Ohio, Common Pleas Court and It,s (sic) Delegates, Appealee (sic).”

{¶ 2} In the underlying case, *State v. Bennie Ford*, Cuyahoga County Common Pleas Court Case No. CR-396839, Ford was charged with rape and kidnaping with a sexual motivation specification. On March 5, 2003, Ford pleaded guilty to felonious assault and kidnaping in a plea bargain under which, inter alia, the sexual motivation specification was deleted. The sentencing entry, a certified copy of which is attached to the motion for summary judgment, clearly reads in pertinent part: “count 2 is amended to read felonious assault RC 2903.11 F-2 and by deleting sexual motivation specification.” The trial judge sentenced Ford to four years on each count concurrent, and granted him almost two and one-half years of jail-time credit.

{¶ 3} Ford avers in his complaint that the sexual motivation specification was not deleted, because the prison officials have incorrectly notified the Cuyahoga County Sheriff about the sexual motivation specification, and now the sheriff is demanding that Ford register as a sexual offender. In February 2009, Ford filed in the underlying case a “Writ of Error in the nature of coram nobis for adjustment of record.” The docket shows that on May 1, 2009, the trial court dismissed the writ of error because “[t]he journal entry reflects defendant plead guilty to kidnapping F-1 and felonious assault F-2 as amended by deleting sexual motivation specification.”

{¶ 4} 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. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue 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. Connoles v. Cleveland Bd. of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850; and *State ex rel. Dayton-Oakwood Press v. Dissinger* (1940), 32 Ohio Law Abs. 308.

{¶ 5} In the present case, Ford cannot establish a clear, legal right to his requested relief, that the court and/or the clerk delete the sexual motivation specification, because the docket and the sentencing journal entry show that it has already been done. Moreover, it has been of record since 2003.

{¶ 6} Furthermore, Ford's petition is procedurally defective. He failed to support his complaint with an affidavit "specifying the details of the claim" as required by Local Rule 45(B)(1)(a). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077 and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶ 7} The petition is also defective because it is improperly captioned. Ford styled this petition as "Bennie Ford, State of Ohio, Appellant v. State of Ohio, Common Pleas Court and It's (sic) Delegates, Appealee (sic)." R.C. 2731.04 requires that an application for a writ of mandamus "must be by petition, in the name of the state on the relation of the person applying." The failure to

caption the case correctly creates uncertainty as to the identity of the respondent.

This failure to properly caption a mandamus action is sufficient grounds for denying the writ and dismissing the petition. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270. Additionally, Civ.R. 10(A) requires the caption of the complaint to state the addresses of all the parties. This court has held that these deficiencies warrant dismissal. *State ex rel. Larry Calloway v. Court of Common Pleas of Cuyahoga Cty.* (Feb. 27, 1997), Cuyahoga App. No. 71699; *State ex rel. Samuels v. Mun. Court* (Nov. 22, 1994), Cuyahoga App. No. 67762; and *State ex rel. White v. Villanueva* (Oct. 6, 1993), Cuyahoga App. No. 66009.

{¶ 8} These procedural defects are particularly fatal in the present case. The failure to identify the respondents, whether the court, the judge, the clerk, the sheriff or the Ohio Department of Rehabilitation and Correction creates confusion as to what duty is sought to be enforced. Similarly, the failure to support the petition with the required and appropriate affidavit leaves this court without a solid foundation to even understand the case, especially as it appears that critical averments are based on hearsay or supposition. Mandamus does not lie in doubtful cases.

{¶ 9} Accordingly, the court grants the respondents's motion for summary judgment and 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).

LARRY A. JONES, JUDGE

COLLEEN CONWAY COONEY, A.J., and
KENNETH A. ROCCO, J., CONCUR