

[Cite as *State v. Lenard*, 2010-Ohio-2488.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94782

STATE OF OHIO

RESPONDENT

VS.

RICHARD LENARD

RELATOR

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 432296
Order No. 433711

RELEASE DATE: June 2, 2010

FOR RELATOR

Richard Lenard, pro se
Inmate No. 570-627
Noble Correctional Institution
15708 McConnellsville Road
Caldwell, Ohio 43724

ATTORNEYS FOR RESPONDENT

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} Relator, Richard Lenard, is the defendant in *State v. Lenard*, Cuyahoga Cty. Court of Common Pleas Case No. CR-463837. “Pursuant to a plea agreement, Lenard pled guilty to receiving stolen property, tampering with records, telecommunications fraud, forgery, theft, and grand theft of a motor vehicle. The trial court sentenced him to an aggregate of four years in prison.” *State v. Lenard*, Cuyahoga App. No. 93373, 2010-Ohio-81. The court of common pleas granted judicial release and placed Lenard on five years community control sanctions. Ultimately, the court of common pleas

determined that he had violated community control sanctions and ordered him to serve the remainder of his four-year sentence. This court affirmed. See Cuyahoga App. No. 93373, 2010-Ohio-81, *supra* (the appeal from the judgment that Lenard violated community control sanctions). Lenard did not appeal his original plea and sentence.

{¶ 2} In this action in mandamus, Lenard complains that he was not provided pretrial discovery in Case No. CR-463837, including a search warrant affidavit. He requests that this court compel “respondent [apparently, Judge John J. Russo to whom Case No. CR-463837 is assigned] to Order the District Attorney of Cuyahoga County to grant petitioner, defendant below, all of the pretrial discovery including the search warrant affidavit in it’s [sic] original form as it was prepared at the signing of the Judge or Magistrate * * *.” Complaint, Ad Damnum Clause (capitalization in original).

{¶ 3} The requirements 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. Mandamus may compel a court to exercise judgment or discharge a function, but it may not control judicial discretion, even if that discretion is grossly abused. Additionally,

mandamus is not a substitute for appeal and does not lie to correct errors and procedural irregularities in the course of a case. If the relator has or had an adequate remedy, relief in mandamus is precluded – regardless of whether the relator used the remedy. *State ex rel. Smith v. Fuerst*, Cuyahoga App. No. 86118, 2005-Ohio-3829, at ¶4.

{¶ 4} Mandamus does not lie to challenge a judge’s pretrial discovery order in a criminal case. Rather, discovery determinations are within the discretion of the trial court. Seeking discovery and, if necessary, appealing a disputed ruling is an adequate remedy. See *State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 2007-Ohio-4789, 874 N.E.2d 510, at ¶12, et seq. “Additionally, if a relator had an adequate remedy at law, regardless of whether it was used, relief in mandamus is precluded.” *State ex rel. Hammond v. Burnside*, Cuyahoga App. No. 94579, 2010-Ohio-1933. As a consequence, Lenard has not demonstrated that he has a clear legal right to relief or that the court of common pleas has a clear legal duty to order the discovery he seeks.

{¶ 5} As noted above, Lenard did not appeal his original plea and conviction. We acknowledge that Lenard pled guilty. “When a defendant enters a plea of guilty as part of a plea bargain, the defendant waives all appealable errors which may have occurred at trial, unless such errors are

shown to have precluded the defendant from entering a knowing and voluntary plea. *State v. Kelley* (1991), 57 Ohio St.3d 127, 566 N.E.2d 658.” *State v. Bobo* (Nov.1, 2001), Cuyahoga App. No. 77793, at 3. Nevertheless, Lenard did have the right to appeal and challenge the propriety of his plea. Of course, if Lenard had not elected to plead guilty, he could have challenged the discovery ruling directly on appeal. Relief in mandamus would not, therefore, be appropriate.

{¶ 6} Additionally, the complaint has several defects. Lenard failed to file an affidavit specifying the details of the claim as required by Loc.App.R. 45(B)(1)(a). This defect requires dismissal of the complaint. *Morris v. Bur. of Sentence Computation*, Cuyahoga App. No. 89517, 2007-Ohio-1444.

{¶ 7} We also note that the caption of this case is “*State v. Lenard*.” That is, Lenard has failed to identify the relator and the respondent. Compare *State v. Thomas*, Cuyahoga App. No. 89583, 2007-Ohio-1692, at ¶2; *State v. Soltau*, Cuyahoga App. No. 84671, 2004-Ohio-4232, at ¶4. Furthermore, he has not included the addresses of the parties in the caption as required by Civ.R. 10(A), which may also be a ground for dismissal. *Clarke v. McFaul*, Cuyahoga App. No. 89447, 2007-Ohio-2520, at ¶5.

{¶ 8} Accordingly, respondent’s motion for summary judgment 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).

Writ denied.

LARRY A. JONES, JUDGE

SEAN C. GALLAGHER, A.J., and
ANN DYKE, J., CONCUR