

[Cite as *State ex rel. Hondo v. McGinty*, 2010-Ohio-2900.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94915

**STATE OF OHIO, EX REL.
AMUN HONDO EL**

RELATOR

VS.

JUDGE TIMOTHY MCGINTY

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 433043
Order No. 434815

RELEASE DATE: June 23, 2010

FOR RELATOR

Amun Hondo El
27500 Bishop Park Drive
Apt. W#406
Willoughby Hills, Ohio 44092

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

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

JAMES J. SWEENEY, J.:

{¶ 1} Relator, Amun Hondo El (aka Mario Herring), is the defendant in *State v. Herring*, Cuyahoga Cty. Court of Common Pleas Case No. CR-508614, which has been assigned to respondent. Hondo El requests that this court issue a writ of mandamus compelling respondent judge “to honor Relator’s sui juris filings via Affidavits and Motions that was [sic] filed on 3/24/2010, 3/23/2010, 3/18/2010/ 3/12/2010, 3/05/2010.” (Capitalization in original.)

{¶ 2} Respondent has filed a motion for summary judgment. For the reasons stated below, we grant the motion and deny Hondo El’s request for relief.

{¶ 3} Respondent observes that Hondo El filed the identical complaint in the Supreme Court of Ohio sub nom. *Hondo El v. Court of Common Pleas, Cuyahoga Cty.*, Supreme Court of Ohio Case No. 2010-0557. The complaints in both courts were filed on the same day, March 30, 2010. A review of the docket in Case No. 2010-0557 reflects that the Supreme Court granted a motion to dismiss the action on June 9, 2010.

{¶ 4} It is well-established that res judicata bars an action which duplicates a previously denied action. See, e.g., *State ex rel. Roberson v. Mason*, Cuyahoga App. No. 91783, 2009-Ohio-1884; *State ex rel. Sharif v. McDonnell* (Aug. 14, 1997), Cuyahoga App. No. 72738. In light of the fact that the Supreme Court has dismissed a complaint in which Hondo El asserts the same claim, we must grant the motion for summary judgment and deny relief.

{¶ 5} We also note that Hondo El requests that this court compel respondent to act on his filings made on various dates in March 2010. Yet, Hondo El filed this complaint on March 30, 2010. An action in mandamus seeking to compel a court to rule on a motion is premature if the complaint is filed fewer than 120 days after the filing of the motion. See Sup.R. 40(A)(3); *State ex rel. Barksdale v. Sutula*, Cuyahoga App. No. 93861, 2009-Ohio-4885. Obviously, Hondo El filed the complaint in this action prematurely.

{¶ 6} 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).

{¶ 7} Writ denied.

JAMES J. SWEENEY, JUDGE

KENNETH A. ROCCO, P.J., and
PATRICIA A. BLACKMON, J., CONCUR