

[Cite as *Schweitzer v. O'Donnell*, 2010-Ohio-367.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94407

MARIANO SCHWEITZER

RELATOR

VS.

JOHN P. O'DONNELL

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 429872
Order No. 430284

RELEASE DATE: February 1, 2010

FOR RELATOR

Mariano Schweitzer, pro se
Inmate No. 563-511
Belmont Correctional Institution
P.O. Box 540
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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

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Mariano Schweitzer, the relator, has filed a complaint for a writ of mandamus. Schweitzer seeks an order from this court that requires Judge John P. O'Donnell to grant nine days of additional jail-time credit in *State v. Schweitzer*, Cuyahoga County Court of Common Pleas Case No. CR-519050. Judge O'Donnell has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} Initially, we find that Schweitzer's complaint for a writ of mandamus is procedurally defective. A complaint for a writ of mandamus

must be brought in the name of the state of Ohio, on relation of the person applying for the writ. Herein, Schweitzer has failed to properly caption his complaint for a writ of mandamus. The failure of Schweitzer to properly caption his complaint warrants dismissal. *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766; *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

{¶ 3} Schweitzer has also failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint must be supported by an affidavit that specifies the details of his claim. The failure of Schweitzer to comply with the supporting affidavit requirement of Loc.App.R. 45(B)(1)(a) requires dismissal of the complaint for a writ of mandamus. *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *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. It must also be noted that Schweitzer has failed to comply with R.C. 2969.25(C), which requires that an inmate who files a complaint against a government entity or government employee must support the complaint with a statement that: (1) sets forth the balance in the inmate's account for the preceding six months, as certified by the institutional cashier;

and (2) a statement that sets forth all other cash and items of value as owned by the inmate. The failure of Schweitzer to comply with R.C. 2969.25(C) warrants dismissal of his complaint for a writ of mandamus. *Martin v. Woods*, 121 Ohio St.3d 609, 2009-Ohio-1928, 906 N.E.2d 1113.

{¶ 4} Finally, Schweitzer's request for a writ of mandamus is moot. Attached to Judge O'Donnell's motion for summary judgment are two journal entries, which demonstrate that Schweitzer has been granted jail-time credit in CR-519050 and that a ruling has been issued with regard to his motion for jail-time credit. Thus, Schweitzer's request for a writ of mandamus is moot. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723; *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163. It must also be noted that any error associated with the calculation of jail-time credit must be addressed through an appeal. *State ex rel Britton v. Foley-Jones* (March 5, 1998), Cuyahoga App. No. 73646; *State ex rel. Spates v. Sweeney* (April 17, 1997), Cuyahoga App. No. 71986.

{¶ 5} Accordingly, we grant Judge O'Donnell's motion for summary judgment. Costs to Schweitzer. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R.58(B).

Writ denied.

FRANK D. CELEBREZZE, JR., JUDGE

KENNETH A. ROCCO, P.J., and
CHRISTINE T. MCMONAGLE, J.