

[Cite as *State ex rel. Smith v. McDonnell*, 2010-Ohio-6035.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95786

**STATE OF OHIO, EX REL.
RODNEY SMITH**

RELATOR

VS.

**COMMON PLEAS JUDGE,
NANCY R. MCDONNELL**

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 438573
Order No. 439477

RELEASE DATE: December 3, 2010

FOR RELATOR

Rodney Smith, pro se
Inmate No. 0147214
Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44101

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

COLLEEN CONWAY COONEY, J.:

{¶ 1} Rodney Smith, the relator, has filed a complaint for a writ of mandamus to require Judge Nancy R. McDonnell to conduct a hearing, in *State v. Smith*, Cuyahoga County Court of Common Pleas Case No. CR-539775, to address allegations of ineffective assistance of trial counsel. Judge McDonnell has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} Initially, we find that Smith's complaint for a writ of mandamus is procedurally defective. Smith has failed to comply with Loc.App.R. 45(B)(1)(a),

which mandates that his complaint must be supported by a sworn affidavit that specifies the details of his claim. *Griffin v. McFaul*, 116 Ohio St.3d 30, 2007-Ohio-5506, 876 N.E.2d 527. It must also be noted that Smith 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 sworn statement that sets forth all other cash and items of value owned by the inmate. *Martin v. Woods*, 121 Ohio St.3d 609, 2009-Ohio-1928, 906 N.E.2d 1113. In addition, Smith has failed to comply with R.C. 2969.25(A), which requires the attachment of an affidavit to the complaint that describes each civil action or appeal filed within the previous five years in any state or federal court. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

{¶ 3} Finally, we find that Smith has failed to establish that he is entitled to a writ of mandamus. In order for this court to issue a writ of mandamus, Smith must establish that: (1) he possesses a clear legal right to a hearing with regard to the allegations of ineffective assistance of trial counsel; (2) Judge McDonnell possesses a clear legal duty to conduct a hearing with regard to the allegations of ineffective assistance of trial counsel; and (3) there exists no other adequate

remedy in the ordinary course of the law. *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 374 N.E.2d 641; *State ex rel. Natl. City Bank v. Bd. of Edn.* (1977), 52 Ohio St. 2d 81, 369 N.E.2d 1200.

{¶ 4} In the case sub judice, Smith's request for a hearing is premised upon a motion to disqualify counsel filed on September 17, 2010. Smith, however, has failed to establish that he possesses a clear legal right to a hearing or that Judge McDonnell possesses a clear legal duty to conduct a hearing with regard to the motion to disqualify counsel. Cf. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Smith also possesses or possessed an adequate remedy at law, through an appeal, since the trial court denied the motion to disqualify counsel on September 23, 2010. *State ex rel. Hughley v. McMonagle*, 121 Ohio St.3d 536, 2009-Ohio-1703, 905 N.E.2d 1220.

{¶ 5} Accordingly, we grant Judge McDonnell's motion for summary judgment. Costs to Smith. 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.

COLLEEN CONWAY COONEY, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
JAMES J. SWEENEY, J., CONCUR

