

[Cite as *Simmons v. Saffold*, 2010-Ohio-918.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94619

ROBIN SIMMONS

RELATOR

VS.

SHIRLEY STRICKLAND SAFFOLD, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DISMISSED**

Writ of Procedendo

Order No. 431041

RELEASE DATE: March 8, 2010

FOR RELATOR

Robin Simmons, pro se
Inmate #0276104
P. O. Box 5600
Cleveland, Ohio 44101

ATTORNEY FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

ANN DYKE, J.:

{¶ 1} On February 2, 2010, relator Robin Simmons filed a writ of procedendo against Judge Shirley Strickland Saffold. Simmons, the defendant in *State v. Simmons*, Cuyahoga County Court of Common Pleas Case No. CR-524092, asks this court to issue the writ and order Judge Saffold to rule on her motion to dismiss for violation of speedy trial, which she filed on December 4, 2009. Simmons's failure to satisfy several procedural requirements in filing her writ subjects it to dismissal. *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *Martin v. Woods*, 121 Ohio St.3d 609, 2009-Ohio-1928, 906 N.E.2d 1113.

{¶ 2} Initially, we find that Simmons's complaint for a writ of procedendo is defective since it is improperly captioned. A complaint for a writ of procedendo

must be brought in the name of the state, on relation of the person applying. Simmons's failure to properly caption the complaint warrants dismissal. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Judge Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

{¶ 3} Civ.R. 10(A) also requires the caption of the complaint to state the addresses of all the parties. This court has previously held that such deficiency warrants 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. 67792; and *State ex rel. White v. Villanueva* (Oct. 6, 1993), Cuyahoga App. No. 66009.

{¶ 4} We also find that Simmons failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint be supported by an affidavit which specifies the details of the claim. The failure to comply with the supporting affidavit provision of Loc.App.R. 45(B)(1)(a) further requires dismissal of the complaint for a writ of procedendo. *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.

{¶ 5} We further note that Simmons failed to comply with R.C. 2969.25 which requires the attachment of an affidavit describing each civil action or appeal filed by the relator 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; *In Re: Woods* (Apr. 26, 2001), Cuyahoga App. No. 79467; *Clark v. State* (May 17, 2001), Cuyahoga App. No. 79584.

{¶ 6} Lastly, Simmons filed this complaint on February 2, 2010, but only filed her motion on December 4, 2009. “This court has consistently held that complaints in procedendo are premature when the time period to rule on motions has not exceeded 120 days as set forth by Sup.R. 40(A). *State ex rel. Mayes v. Ambrose*, Cuyahoga App. No. 88259, 2006-Ohio-3322; *State ex rel. McDoughall v. Corrigan*, Cuyahoga App. No. 80633, 2002-Ohio-327; *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas* (1992), 83 Ohio App.3d 684, 615 N.E.2d 689.” Since less than sixty days has elapsed from the time of the filing of her motion to the time she filed her complaint for a writ of procedendo, this court further finds that Simmons’s complaint is premature.

{¶ 7} Accordingly, in light of the above reasons, we sua sponte dismiss the petition. Relator to bear costs. 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 Dismissed.

ANN DYKE, JUDGE

KENNETH A. ROCCO, P.J., and
MELODY J. STEWART, J., CONCUR