

[Cite as *State ex rel. Varholick v. Donnelly*, 2011-Ohio-1700.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96330

STATE OF OHIO EX REL.,
JAMES VARHOLICK

RELATOR

VS.

MICHAEL DONNELLY, JUDGE

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 441983
Order No. 442381

RELEASE DATE: April 5, 2011

FOR RELATOR

James Varholick, Pro Se
Inmate #573-485
Marion Correctional Institution
Post Office Box 57
Marion, Ohio 43301

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

MARY J. BOYLE, P.J.:

{¶ 1} James Varholick filed a complaint for a writ of mandamus. Varholick seeks an order from this court that requires Judge Michael Donnelly to render a ruling and journalize findings of fact and conclusions of law with regard to a “motion to correct improper sentence” as filed in *State v. Varholick*, Cuyahoga County Court of Common Pleas Case No. CR-485615. Judge Donnelly has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} Initially, we find that Varholick’s complaint for a writ of mandamus is procedurally defective. Varholick has 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 Varholick 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.

{¶ 3} It must also be noted Varholick 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 Varholick 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} In addition, Varholick has failed to comply with R.C. 2969.25(A), which requires the attachment of an affidavit to the complaint for a writ of mandamus 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.

{¶ 5} Finally, Varholick’s request for a writ of mandamus is moot. Attached to the motion for summary judgment is a journal entry, which demonstrates that Judge Donnelly denied Varholick’s “motion to correct improper sentence” on February 4, 2011. Thus, Varholick’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 Judge Donnelly possesses no duty to render findings of fact and conclusions of law upon issuing a ruling with regard to Varholick’s “motion to correct improper sentence.” *State ex rel. Hudson v. Sutula* (Jan. 14, 2011), Cuyahoga App. No. 96247; *State ex rel. Jefferson v. Russo*, Cuyahoga App. No. 90682, 2008-Ohio-135.

{¶ 6} Accordingly, we grant Judge Donnelly’s motion for summary judgment. Costs to Varholick. 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.

MARY J. BOYLE, PRESIDING JUDGE

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