

[Cite as *State ex rel. Williams v. Judge Presiding over Cuyahoga Cty. Court of Common Pleas Case Nos. Cr-92-279[6]54-B & Cr-92-288957*, 2014-Ohio-4582.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101437

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**STATE OF OHIO, EX REL.  
MASON WILLIAMS**

RELATOR

vs.

**PRESIDING JUDGE OVER  
CUYAHOGA COUNTY COURT OF  
COMMON PLEAS CASE NOS.  
CR-92-279[6]54-B AND CR-92-288957**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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Writ of Mandamus  
Motion No. 476121  
Order No. 478993

**RELEASE DATE:** October 15, 2014

**FOR RELATOR**

Mason Williams, pro se  
Inmate No. 270-825  
Richland Correctional Institution  
1001 Olivesburg Road  
P.O. Box 8107  
Mansfield, Ohio 44901

**ATTORNEYS FOR RESPONDENT**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
By: James E. Moss  
Assistant County Prosecutor  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., P.J.:

{¶1} Relator, Mason Williams, petitions this court for a writ of mandamus directing respondent presiding judge to discharge and return to him bond money that was posted by surety companies in regard to two criminal cases in 1992: *State v. Mason*, Cuyahoga C.P. No. CR-92-279654-B, and *State v. Mason*, C.P. No. CR-92-288957. Judge Deena Calabrese has filed a motion for summary judgment and relator has filed a brief in opposition. For the reasons that follow, we grant respondent's motion for summary judgment and deny the complaint for writ of mandamus.

{¶2} In CR-92-279654-B, relator was arraigned on criminal charges on August 13, 1992. His bond was set at \$50,000, but it was further ordered that if he posted bail, then "an additional amount shall be added to the amount of bail as set forth in O.R.C. 2743.70 and 2949.091." On August 19, 1992, bond was set at \$200,000 cash or surety. The court denied relator's request to reduce bail to \$100,000 on August 24, 1992. A journal entry dated September 3, 1992, indicates that relator was "erroneously released by sheriff, inasmuch as bond was never reduced and bond remains as set by this court at \$200,000.00 cash or surety pending hearing which has been set for September 4, 1992." On September 4, 1992, relator's motion to reconsider bond was denied. On September 14, 1992, the court granted a motion to return bond powers to surety "for good cause shown." On November 23, 1992, a capias was issued and relator's bond was revoked.

{¶3} In CR-92-288957, relator was arraigned on criminal charges on November 2, 1992, and bond was set at \$25,000. It was further ordered that if he posted bail, then “an additional amount shall be added to the amount of bail as set forth in O.R.C. 2743.70 and 2949.091.” On November 6, 1992, an order was entered indicating that “bond in CR[-92-]279654[-B] to apply.” On November 23, 1992, a capias was issued for relator and bond was revoked.

{¶4} The state’s motion to consolidate CR-92-279654-B and CR-92-288957 was granted by agreement, as reflected in the order dated December 7, 1992. A trial was held on the charges against relator. In CR-92-288957, relator was convicted of attempted murder with a firearm and carrying a concealed weapon. In CR-92-279654-B, relator was convicted of murder with a firearm. The trial court imposed prison sentences in both cases.

{¶5} Relator has averred that on August 13, 1992, he paid ten percent of the \$50,000, or \$5,000, for the initial amount of bail set in CR-92-279654-B by utilizing the services of bail bondsman Dan Kelly. The handwritten docket submitted into evidence by respondent reflects that Dan Kelly from American Bankers Insurance did post the \$50,000 bond. Relator has averred that on September 2, 1992, he paid another \$5,000 on a \$100,000 surety bond in the same case, again by utilizing the services of bail bondsman Dan Kelly of American Bankers Insurance. Respondent has submitted the handwritten docket into evidence, which reflects that Mary Kelly, bond agent for American Bankers Insurance, posted the \$100,000 bond.

{¶6} Relator has averred that on November 2, 1992, he paid \$20,000, which is ten percent of the \$200,000 bond later set in CR-92-279654-B. According to the handwritten docket that is in evidence, Ike Goldstein from Allegheny Insurance posted this bond on November 6, 1992. Relator's bond in CR-92-279654-B was applied to CR-92-288957. The dockets provided by both relator and respondent confirm that a *capias* was issued for relator on November 23, 1992, and he was in custody as of November 24, 1992.

{¶7} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987).

Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese*, 69 Ohio St.3d 176, 631 N.E.2d 119 (1994); and *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerningham v. Gaughan*, 8th Dist. Cuyahoga No. 67787, 1994 Ohio App. LEXIS 6227 (Sept. 26, 1994). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear.

It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165,

364 N.E.2d 1 (1977); and *State ex rel. Connoles v. Cleveland Bd. of Edn.*, 87 Ohio App.3d 43, 621 N.E.2d 850 (8th Dist.1993).

{¶8} Respondent argues that summary judgment is warranted in her favor because relator's writ does not include the certified cashier statement required by R.C. 2969.25(C) and is, therefore, defective. Respondent further argues that relator is not entitled to remedy by way of a writ of mandamus.

{¶9} Relator contends that his complaint should not be dismissed for failure to comply with R.C. 2969.25(C) because he claims he forwarded a cashier's statement to the cashier at the correctional institution to be certified. Nonetheless, there was no certified copy of his cashier's statement filed with this action. "The requirements of R.C. 2969.25 are mandatory and failure to comply with them requires dismissal of an inmate's complaint." *State ex rel. Hall v. Mohr*, Slip Opinion No. 2014-Ohio-3735, ¶ 4. Accordingly, failure to comply with R.C. 2969.25(C) requires the dismissal of this action.

{¶10} Relator has not established a clear legal right to the return of the bond money posted with the court by the various sureties, nor has he established that respondent has any clear legal duty to order the monies to be returned to him. The subject bonds were posted in 1992 by three different bond agents, none of whom are parties to this original action. The dockets reflect that relator's bond was revoked on November 23, 1992. Although both parties agree that relator's bond was revoked, they dispute the reasons for the revocation, which cannot be discerned from the evidence

presented. Failure to appear can result in a breach of the condition of bond and the forfeiture of bail. Crim.R. 46; R.C. 2937.35.

Bail bonds are contracts between the surety and the state. *See State v. Scherer*, 108 Ohio App.3d 586, 591, 671 N.E.2d 545 (2d Dist.1995). The surety agrees to ensure the appearance of the defendant in court and the state agrees to release the defendant into the surety's custody. *Id.* If the defendant fails to appear, there is a breach of the condition of bond, and the court may declare a forfeiture of the bond unless the surety can be exonerated as provided by law. *See State v. Hughes*, 27 Ohio St.3d 19, 20, 501 N.E.2d 622 (1986); *see also* R.C. 2937.35.

*State v. Lott*, 1st Dist. Hamilton No. C-130543, 2014-Ohio-3404, ¶ 8. It is a common sequence of events for courts to “revoke” a bond, issue a *capias* for arrest, and schedule a bond-forfeiture hearing. *See State v. Slider*, 184 Ohio App.3d 68, 2009-Ohio-4179, 919 N.E.2d 775, ¶ 7 (4th Dist.) (noting that trial court considered its revocation of a bond to be synonymous with forfeiture).

{¶11} The only evidence that has been presented in this action is the docket entries of the criminal cases, which all reflect that bonding agents, and not relator, deposited the bonds with the court.

{¶12} R.C. 2937.41 governs the return of bail and provides:

On the discharge of bail, the magistrate or clerk of the court shall return, subject to division (B) or (C) of section 2937.40 of the Revised Code, deposited cash or securities to the depositor, but the magistrate or clerk of the court may require presentation of an issued original receipt as a condition to the return. In the case of discharged recognizances, subject to division (B) or (C) of section 2937.40 of the Revised Code, the magistrate or clerk of the court shall endorse the satisfaction on the recognizance and shall forthwith transmit to the county recorder the notice of discharge provided for in section 2937.26 of the Revised Code.

{¶13} Because the only evidence before us shows that relator did not deposit the bail, he has failed to establish any clear legal right to have it returned to him. *See* R.C. 2937.40. Further, there is no indication in the evidence presented as to whether the bail was returned to the depositors, if the bail was forfeited according to law, or if it remains on deposit. As set forth previously, a writ of mandamus should not issue in doubtful cases.

{¶14} Further, this is an issue that could be raised through a direct appeal. *E.g.*, *State v. Riggs*, 4th Dist. Ross No. 846, 1981 Ohio App. LEXIS 10117 (Nov. 17, 1981) (reviewing a trial court's order that denied a defendant's motion for return of bail money that the defendant had posted); *see also Slider*, 2009-Ohio-4179, ¶ 16 (court noted that agent for surety company could have directly appealed the court's denial of a motion for release of bail).

{¶15} Accordingly, relator has failed to establish that there are no other adequate remedies at law. Respondent's motion for summary judgment is granted, and relator's complaint for writ of mandamus is denied. Relator to pay costs. The court directs the clerk of courts to serve all parties with notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶16} Writ denied.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

KENNETH A. ROCCO, J., and  
TIM McCORMACK, J., CONCUR



