

[Cite as *State ex rel. Simmons v. Clancy*, 2015-Ohio-1387.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102431

**STATE OF OHIO, EX REL.
DERRICK SIMMONS**

RELATOR

vs.

JUDGE MAUREEN CLANCY

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus
Motion No. 482090
Order No. 483938

RELEASE DATE: April 7, 2015

FOR RELATOR

Derrick Simmons, pro se
Inmate # 633-220
Belmont Correctional Institution
P.O. Box 540
St. Clairsville, Ohio 43950

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor

By: James E. Moss
Assistant County Prosecutor
9th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN T. GALLAGHER, J.:

{¶1} On December 31, 2014, the relator, Derrick Simmons, commenced this mandamus action against the respondent, Judge Maureen Clancy, to compel the return of original papers that he submitted with post-trial motions in the underlying case, *State v. Simmons*, Cuyahoga C.P. No. CR-12-563435-A. On January 21, 2015, the respondent, through the Cuyahoga County Prosecutor, moved to dismiss. Simmons never filed a response. For the following reasons, this court grants the motion to dismiss.

{¶2} In the underlying case, on November 13, 2012, Simmons pleaded guilty to attempted rape, the remaining four counts were dismissed, and the trial judge sentenced him to six years in prison. The gravamen of Simmons's complaint appears to be that in June 2013, he filed a motion to withdraw his guilty plea and attached original medical records to support his position that he was physically incapable of the crime. He indicates that he requested/instructed the clerk to make copies of these original medical records and return the originals to him. The docket shows that the judge denied the motion to withdraw the guilty plea in July 2013. Simmons then filed a motion to compel medical records, and the judge denied that motion in August 2013. Simmons now claims that the original medical records were not returned to him as instructed, and he brings this mandamus action to compel the return of the originals to him.¹

¹ In the motion to dismiss, the respondent judge submits that it is unclear what records Simmons seeks, because the motion to compel medical records seeks an order from the judge to Simmons's trial attorney to produce the exonerating records.

{¶3} 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. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); *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). Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 676 N.E.2d 108 (1997) *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.*, 56 Ohio St.3d 33, 564 N.E.2d 86 (1990). 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); *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 113 N.E.2d 14 (1953); *State ex rel. Connoles v. Cleveland Bd. of Edn.*, 87 Ohio App.3d 43, 621 N.E.2d 850 (8th Dist. 1993).

{¶4} Simmons's request for mandamus fails because he does not establish that the judge has a clear, legal duty to return the original records that Simmons attached to support his motions. The creation of a duty enforceable in mandamus is the distinct function of the legislative branch of government, and Simmons cites to no statute or any other authority for his proposition. *State ex rel. Gessner v. Vore*, 123 Ohio St.3d 96, 2009-Ohio-4150, 914 N.E.2d 376; *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219, 767 N.E.2d 719. Moreover, the judge is not the proper respondent. Requests for records must be directed to the clerk of courts. *State ex rel. Whittaker v. Court of Common Pleas*, 8th Dist. Cuyahoga No. 78718, 2001 Ohio App. LEXIS 680 (Feb. 15, 2001). This court notes that the duty of the clerk is to carefully preserve all papers delivered to him, R.C. 2303.09, and to keep records and papers appertaining to the court, R.C. 2303.14.

{¶5} Simmons may have or had an adequate remedy at law precluding the issue of a writ of mandamus by filing a motion for return of the original papers and then, if necessary, appealing the denial of such motion. An appeal would allow the issue to be determined upon a complete record.

{¶6} Accordingly, this court grants the motion to dismiss and dismisses the application for a writ of mandamus. Relator to pay costs. Costs waived. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶7} Complaint dismissed.

EILEEN T. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
MELODY J. STEWART, J., CONCUR