

[Cite as *State v. Armstrong*, 2015-Ohio-3242.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102934

STATE OF OHIO

RESPONDENT

vs.

SHAWN ARMSTRONG

RELATOR

JUDGMENT:
COMPLAINT DISMISSED

Writ of Quo Warranto
Motion No. 485612
Order No. 487267

RELEASE DATE: August 12, 2015

FOR RELATOR

Shawn Armstrong, pro se
Inmate Number: 664-072
Marion Correctional Institution
P.O. Box 57
Marion, OH 43302

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor

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

ANITA LASTER MAYS, J.:

{¶1} Shawn Armstrong has filed a complaint for a writ of quo warranto. Armstrong seeks release “from state’s custody primarily due to trial court judge waiving and ignoring appellant’s challenge to show its jurisdiction.” The state of Ohio, through the Cuyahoga County Prosecutor, has filed a motion to dismiss that we grant for the following reasons.

{¶2} Initially, we find that Armstrong’s complaint for a writ of quo warranto is procedurally defective. Armstrong has failed to comply with the mandatory requirements of Loc.App.R. 45(B)(1)(a), which provides that the complaint for an original action must contain an affidavit that specifies the details of the claim. *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *Hutton v. Corrigan*, 8th Dist. Cuyahoga No. 97907, 2012-Ohio-2071. In addition, Armstrong has failed to comply with R.C. 2969.25(A), which requires that an inmate who commences a civil action against a governmental entity or employee must include within his original action an affidavit that contains a description of each civil action or appeal of a civil action filed in the previous five years. *State ex rel. Hall v. Mohr, Dir.*, 140 Ohio St.3d 297, 2014-Ohio-3735, 17 N.E.3d 581. Armstrong has also failed to comply with R.C. 2969.25(C), which requires that an inmate, who files a complaint for an original action against a governmental entity or employee, must file a statement that sets forth the balance in the inmate’s account for the preceding six months, as certified by the institutional cashier and must also set forth all other cash

and things of value owned by the inmate. *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378. Compliance with R.C. 2969.25(A) and 2969.25(C) must occur at the time the complaint is filed and any defect may not be cured by later filings. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982.

{¶3} Finally, Armstrong has failed to establish a claim upon which relief can be granted vis-a-vis the complaint for a writ of quo warranto. Armstrong does not possess standing to pursue an action in quo warranto, pursuant to R.C. 2733.04 and 2733.05. Standing in quo warranto is given exclusively to the attorney general and county prosecutor with a single exception; persons who claim entitlement to a public office. No other exceptions exist under Ohio law. *State ex rel. Salim v. Ayed, et al.*, 141 Ohio St.3d 129, 2014-Ohio-4736, 22 N.E.3d 1054; *State ex rel. Heer v. Butterfield*, 92 Ohio St. 428, 111 N.E. 279 (1915); *State ex rel. Wasson v. Taylor*, 50 Ohio St. 120, 38 N.E. 24 (1893).

{¶4} Pursuant to Civ.R. 12(B)(6), an original action will be subject to dismissal when it is beyond a doubt that, even if the relator's allegations are viewed in a manner most favorable to the relator, the relator is still unable to establish a set of facts that would allow entitlement to the requested relief. Herein, Armstrong has failed to establish entitlement to a writ of quo warranto because the requested original action can only be maintained in relation to a person who either: (1) unlawfully holds a public or corporate office; or (2) has committed an act that results in the forfeiture of a public office. In addition, the complaint for a writ of quo warranto was not brought by the attorney general or the county prosecutor.

{¶5} Accordingly, we grant the motion to dismiss filed by the Cuyahoga County Prosecutor. Costs to Armstrong. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶6} Complaint dismissed.

ANITA LASTER MAYS, JUDGE

LARRY A. JONES, SR., P.J., and
MARY J. BOYLE, J., CONCUR