

[Cite as *Lawrence v. Shaughnessy*, 2015-Ohio-885.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102616

HOWARD E. LAWRENCE

RELATOR

vs.

THOMAS SHAUGHNESSY, ET AL.

RESPONDENTS

JUDGMENT:
WRIT DISMISSED

Writ of Mandamus
Order No. 483325

RELEASE DATE: March 11, 2015

FOR RELATOR

Howard Lawrence, pro se
Inmate Number 643-726
Southern Ohio Correctional Facility
P.O. Box 45699
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ATTORNEYS FOR RESPONDENTS

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For Charles M. Morgan

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For Judge Mary J. Boyle

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Cuyahoga County Prosecutor
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For Jeffrey Gamso

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Assistant Public Defender
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MELODY J. STEWART, J.:

{¶1} On February 17, 2015, the relator, Howard Lawrence, commenced this mandamus action against the respondents, Thomas Shaughnessy, Charles Morgan, Jeffrey Gamso, and the Honorable Mary J. Boyle, to compel the respondents pursuant to the Ohio Public Records Act, R.C. 149.43, to produce all records from the underlying case, *State v. Lawrence*, Cuyahoga C. P. No. CR-13-570740-A, including the motions for discovery, the bill of particulars, trial court transcript, notes, directions, instructions, subpoenas, and all other documents and materials. For the following reasons, this court dismisses this public records petition sua sponte.

{¶2} Lawrence seeks all of the records from his underlying criminal case, in which he was convicted of aggravated robbery and felonious assault with three-year firearm specifications and having weapons while under disability. He seeks the records from his former defense counsel and from Judge Boyle, whom he sues only in her official capacity as former administrative judge of this court. He alleges that she “is ultimately responsible for the disclosure and/or non-disclosure for the trial courts public record.” (Complaint ¶ 5.)

{¶3} R.C. 149.43(B)(8) provides that a person responsible for public records is not required to permit a person incarcerated pursuant to a criminal conviction to inspect or obtain a copy of any public records concerning a criminal investigation or prosecution unless the public records request is for the purpose of acquiring information that is subject to release as a public record and the judge who imposed the sentence or the judge’s successor in office finds that the information sought is necessary to support what appears to be a justiciable claim of the person. A review of the docket of the underlying case shows that the trial court judge has made no such findings. Thus, Lawrence cannot obtain a writ of mandamus to obtain public records because he has not fulfilled this statutory prerequisite.

{¶4} Moreover, the petition is defective because it is improperly captioned. Lawrence styled this petition as “Howard Lawrence v. Thomas Shaughnessy, et al.” R.C. 2731.04 requires that an application for a writ of mandamus “must be by petition, in the name of the state on the relation of the person applying.” This failure to properly caption a mandamus action is sufficient grounds for denying the writ and dismissing the petition. *Maloney v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 181 N.E.2d 270 (1962).

{¶5} Additionally, mandamus is not the remedy to obtain records from defense counsel. In *State ex rel. Tierney v. Jamieson*, 8th Dist. Cuyahoga No. 80302, 2001-Ohio-4148, respondent Jamieson was representing relator Tierney in an appeal before this court. Tierney requested that this court issue a writ of mandamus compelling Jamieson to provide him with copies of the transcript and briefs in the appeal. This court observed that the relator was attempting to enforce a private right against a private person and dismissed the action sua sponte. Mandamus may not be employed to obtain documents or records from an attorney that is in private practice or to enforce a private right against a private person. *State ex rel. Bryant v. Thompson*, 8th Dist. Cuyahoga No. 97957, 2011-Ohio-5281. This court further notes that *Bryant*’s scope included an attorney employed by the Cuyahoga County Public Defender’s Office.

{¶6} Finally, to the extent that Lawrence seeks to obtain a copy of his transcript at costs through R.C. 149.43, a public records mandamus may not be used to circumvent payment to the official court reporter of the fees designated by the court and statute. *State ex rel. Slagle v. Rogers*, 106 Ohio St.3d 1402, 2005-Ohio-3040, 829 N.E.2d 1215.

{¶7} Accordingly, this court dismisses this public records mandamus action, sua sponte. Relator to pay costs. 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).

{¶8} Writ dismissed.

MELODY J. STEWART, JUDGE

EILEEN T. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR