

[Cite as *State ex rel. Turner v. Sutula*, 2016-Ohio-1129.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103900

STATE OF OHIO, EX REL.
JOHN L. TURNER, JR.

RELATOR

vs.

JUDGE JOHN D. SUTULA

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 492464
Order No. 493523

RELEASE DATE: March 15, 2016

FOR RELATOR

John L. Turner, pro se
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ATTORNEYS FOR RESPONDENT

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Cuyahoga County Prosecutor
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The Justice Center - 9th Floor
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EILEEN T. GALLAGHER, J.:

{¶1} On December 16, 2015, the relator, John L. Turner, Jr., commenced this mandamus action against the respondent, Judge John D. Sutula, to compel the judge to rule on the motions for summary judgment, which Turner filed on October 13, 2015 and November 19, 2015, in the underlying case, *State v. Turner*, Cuyahoga C.P. No. CR-13-576006-A. Turner also remarked that he had an outstanding motion to dismiss for lack of a speedy trial. On January 11, 2016, the respondent moved for summary judgment on the grounds of mootness and procedural defects. Attached to the dispositive motion was a copy of a certified journal entry in which the respondent denied both motions for summary judgment. A review of the docket in the underlying case shows that this journal entry was filed on January 7, 2016. On February 1, 2016, Turner filed a brief in opposition arguing that these journal entries did not fulfill the judge's duty because they did not state the reasons for the decisions. For the following reasons, this court grants the respondent's dispositive motion and denies the application for a writ of mandamus.

{¶2} 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).

{¶3} In the present case, the journal entry denying the motions for summary judgment establishes that the respondent judge has fulfilled his duty to rule on the subject motions and that these claims are moot. Turner does not have a right to have the judge state his reasons for denying the motions for summary judgment. The court first notes that a motion for summary judgment is a remedy for a civil case, and filing such a motion in a criminal case is irregular. Moreover, Civ.R. 52 provides that findings of fact and conclusions of law are unnecessary for motions for summary judgment. *State ex rel. Jefferson v. Russo*, 8th Dist. Cuyahoga No. 90682, 2008-Ohio-135; and *Walker v. Karp*, 8th Dist. Cuyahoga No. 80773, 2002 Ohio App. LEXIS 1500 (Mar. 19, 2002).

{¶4} To the extent that Turner's mandamus action also seeks to compel a ruling on his speedy trial motion, a review of the docket shows that the trial judge denied that motion on June 4, 2015. A review of the docket further shows that Turner did not request reasons for the ruling in the subject motion. Thus, the summary denial fulfilled the judge's duty. *State v. Brown*, 64 Ohio St.3d 476, 597 N.E.2d 97 (1992). An error, if any, on the determination of speedy trial rights is properly reviewed on appeal. *State ex rel. Dix v. Angelotta*, 18 Ohio St.3d 115, 480 N.E.2d 407 (1985).

{¶5} Relator also did not comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. This also is sufficient reason to deny the mandamus, deny indigency status and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842; *State ex rel. Hunter v. Cuyahoga Cty. Court of*

Common Pleas, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420; and *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378 — the defect may not be cured by subsequent filings.

{¶6} Accordingly, this court grants the judge’s motion for summary judgment and denies the application for a writ of mandamus. 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).

{¶7} Writ denied.

EILEEN T. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR