

[Cite as *State ex rel. Worley v. Sutula*, 2016-Ohio-2730.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103923

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STATE OF OHIO, EX REL.  
PEREZ WORLEY

RELATOR

vs.

HONORABLE JUDGE JOHN D. SUTULA

RESPONDENT

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**JUDGMENT:**  
PETITION DENIED

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Writ of Mandamus  
Motion No. 493219  
Order No. 495125

**RELEASE DATE:** April 25, 2016

**FOR RELATOR**

Perez Worley  
Cuyahoga County Jail  
P.O. Box 5600  
Cleveland, Ohio 44101

**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

ANITA LASTER MAYS, J.:

{¶1} Relator Perez Worley filed a petition for writ of mandamus seeking to compel respondent Judge John D. Sutula to rule on various pending motions in two criminal cases. Respondent filed a motion for summary judgment. Relator filed a response, indicating that he does not oppose respondent's motion for summary judgment. The motion for summary judgment is granted.

{¶2} Worley sought rulings on several pro se motions that he had filed in case numbers CR-14-589742-A and CR-14-591718-A. At times he was represented by appointed counsel. These motions included motions "to act in hybrid capacity" and "to proceed pro se with standby counsel."

{¶3} Respondent moved for summary judgment based on defects in the pleadings and, alternatively, contended that Worley was not entitled to mandamus relief. Worley does not object to respondent's motion and has expressed his agreement with it.

{¶4} The petition does not include the affidavit and statement required by R.C. 2969.25(A) and (C), which warrants dismissal. *State ex rel. Jackson v. Calabrese*, 143 Ohio St.3d 409, 2015-Ohio-2918, 38 N.E.3d 880, ¶ 5 (the filing requirement is mandatory and failure to comply with it subjects the petition to dismissal).

{¶5} Worley is not entitled to mandamus relief. A defendant does not have the right to hybrid representation, whereby a defendant would simultaneously act pro se and

also be represented by counsel. *State v. Mongo*, 8th Dist. Cuyahoga No. 100926, 2015-Ohio-1139, ¶ 13, citing *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, paragraph one of the syllabus; *State v. Thompson*, 33 Ohio St.3d 1, 6-7, 514 N.E.2d 407 (1987). “[W]hen counsel represents a criminal defendant, a trial court may not entertain a defendant’s pro se motion.” *Id.* at ¶ 14. Respondent had no duty to rule on the majority of the pro se motions at issue in this action because Worley filed them while he was represented by counsel. Worley concedes this fact.

{¶6} Worley, however, is entitled to a ruling on his pro se motion for self-representation. *Turner v. McGinty*, 8th Dist. Cuyahoga No. 102074, 2015-Ohio-529, ¶ 5 (“Once a defendant has clearly and unequivocally informed the trial court that he wishes to represent himself, the trial court possesses a clear legal duty to determine whether the defendant’s waiver of counsel is knowing, intelligent, and voluntary.”) Respondent, however, has acted on these motions.

{¶7} Respondent denied Worley’s motions to act in hybrid capacity on January 13, 2016. Respondent held a hearing on Worley’s motion to proceed pro se with standby counsel in February 2016. Accordingly, Worley’s claim for mandamus regarding his pro se motions to proceed pro se are moot. *State ex rel. Fontanella v. Kantos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220,

¶ 6. Worley concedes that the court acted on these motions and does not dispute that his petition is moot.

{¶8} Respondent's motion for summary judgment is unopposed and granted. Costs to relator. Costs waived. The court further directs the Clerk of the Eighth District Court of Appeals to serve notice of this judgment upon all parties as required by Civ.R. 58(B).

{¶9} Petition denied.

ANITA LASTER MAYS, JUDGE

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KATHLEEN ANN KEOUGH, P.J., and  
PATRICIA ANN BLACKMON, J., CONCUR