

[Cite as *State ex rel. Makin v. Burnside*, 2016-Ohio-3183.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104150

STATE OF OHIO, EX REL.
HAKEEM MAKIN

RELATOR

vs.

HONORABLE JUDGE JANET R. BURNSIDE

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 494463
Order No. 496093

RELEASE DATE: May 25, 2016

FOR RELATOR

Hakeem Makin
Inmate No. 0196216
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

EILEEN A. GALLAGHER, P.J.:

{¶1} Hakeem Makin has filed a complaint for a writ of mandamus. Makin seeks an order from this court that would require Judge Janet R. Burnside to remove appointed defense counsel in *State v. Makin*, Cuyahoga C.P. Nos. CR-15-594291 and CR-15-600229 and assign new defense counsel. For the following reasons, we decline to issue a writ of mandamus on behalf of Makin.

{¶2} Initially, we find that Makin's complaint for a writ of mandamus is procedurally defective. Makin has failed to comply with R.C. 2969.25(C), which requires that an inmate must include with his complaint for an original action a statement that has been certified by the institutional cashier and sets forth the balance in the inmate's account for the preceding six months. *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378; *State ex rel. Castro v. Corrigan*, 129 Ohio St.3d 342, 2011-Ohio-4059, 952 N.E.2d 497.

{¶3} The requirements of R.C. 2969.25(C) are mandatory and failure to comply with them subjects an inmate's action to dismissal. *Boles v. Knab*, 129 Ohio St.3d 222, 2011-Ohio-2859, 951 N.E.2d 389; *State ex rel. McGrath v. McDonnell*, 126 Ohio St.3d 511, 2010-Ohio-4726, 935 N.E.2d 830; *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634. Moreover, compliance with R.C. 2969.25(C) must occur at the time the complaint is filed and any defect may not be cured by a later amended filing. *Boles* at ¶ 2; *State ex rel. Jackson v. Calabrese*, 143 Ohio St.3d 409,

2015-Ohio-2918, 38 N.E.3d 880; *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982.

{¶4} Despite the procedural defect, a substantive review of Makin’s complaint fails to disclose that he is entitled to a writ of mandamus. In CR-15-594291 and CR-15-600229, Makin requested that his appointed counsel be removed and that new counsel be assigned for trial. On February 9, 2016, Judge Burnside conducted a hearing with regard to Makin’s request for the appointment of new counsel. At the conclusion of the hearing, Judge Burnside denied Makin’s motion for new counsel and held that the “[c]ourt strikes defendant’s motion to disqualify counsel. No hybrid representation is permitted. Hearing held this date on defendant’s request for new attorney to replace Mr. McGraw. Request denied.”

{¶5} A defendant in a criminal trial possesses an independent constitutional right of self-representation and may be allowed to defend himself or herself without counsel when he or she voluntarily, knowingly and intelligently elects self-representation. *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227. However, neither the United States Constitution nor the Ohio Constitution mandate hybrid representation, specifically, when a defendant is acting as co-counsel on his or her own behalf. *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122; *State v. Thompson*, 33 Ohio St.3d 1, 514 N.E.2d 407 (1987). In addition, an indigent defendant does not possess a constitutional right to choose the attorney who will represent him or her at state expense. See *State v. Murphy*, 91 Ohio St.3d 516, 523, 747 N.E.2d 765 (2001);

Thurston v. Maxwell, 3 Ohio St.2d 92, 93, 209 N.E.2d 204 (1965). Those defendants who do not have the means to hire their own lawyers have no cognizable complaint so long as they are adequately represented by attorneys appointed by the courts. *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 109 S.Ct. 2646, 105 L.Ed.2d 528 (1989). Thus, Makin has failed to establish that he is entitled to a writ of mandamus to compel Judge Burnside to appoint new counsel.

{¶6} Finally, Makin possesses an adequate remedy in the ordinary course of the law to challenge Judge Burnside's denial of his motions for appointment of new counsel through an appeal at the conclusion of his trial. An adequate remedy at law, through an appeal, prevents this court from issuing a writ of mandamus. *State ex rel. Elkins v. Fais*, 143 Ohio St.3d 366, 2015-Ohio-2873, 37 N.E.3d 1229; *Ward v. Reed*, 141 Ohio St.3d 50, 2014-Ohio-4512, 21 N.E.3d 303.

{¶7} Accordingly, we grant Judge Burnside's motion for summary judgment. Costs to Makin. 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).

{¶8} Writ denied.

EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
MARY J. BOYLE, J., CONCUR