

[Cite as *State ex rel. Walker v. Ohio Dept. of Rehab & Corr.*, 2016-Ohio-5142.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103979

STATE OF OHIO, EX REL.
DONNIE WALKER

RELATOR

VS.

OHIO DEPARTMENT OF REHABILITATION AND
CORRECTION, ET AL.

RESPONDENTS

JUDGMENT:
COMPLAINT DISMISSED

Writ of Mandamus
Motion No. 493233
Order No. 497366

RELEASE DATE: July 27, 2016

FOR RELATOR

Donnie Walker, pro se
Inmate No. A661-742
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TIM McCORMACK, P.J.:

{¶1} Relator, Donnie Walker, has filed a complaint for a writ of mandamus to compel the Ohio Department of Rehabilitation and Correction (“ODRC”) to apply additional jail-time credit and to correct what he alleges are incorrect records. The ODRC has filed a motion to dismiss, which Walker has opposed. The motion to dismiss is granted for the reasons that follow.

{¶2} On October 9, 2014, the trial court sentenced Walker in two separate criminal cases. In *State v. Walker*, Cuyahoga C.P. No. CR-09-526641-B, the court imposed a prison term of three years, to be served prior to and consecutive with a two-year prison term that was imposed in *State v. Walker*, Cuyahoga C.P. No. CR-09-526893-A. Both entries reflect that Walker was to receive 467 days of jail-time credit to date. They do not indicate that the jail time was to be credited for each case, which would total 934 days of jail-time credit.

{¶3} Walker sent inquiries and demands to the ODRC on October 22, 2015, and November 16, 2015, expressing his belief that he should be credited with 467 days of jail-time credit in CR-09-526641 in addition to the 467 days of jail-time credit he received in CR-09-526893. In both instances, ODRC responded that he could not receive duplicate credit on consecutive terms. He was further advised that the two counts in CR-09-526893 were being served concurrent but that the prison term was consecutive to the sentence being served in CR-09-526641.

{¶4} Walker commenced this action alleging he is entitled to mandamus relief.

{¶5} 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. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977); *Shine v. Saffold*, 8th Dist. Cuyahoga No. 101551, 2014-Ohio-4220, ¶ 2.

{¶6} ODRC has moved to dismiss, alleging Walker has failed to state a claim. ODRC maintains that the journal entries entitle him to one reduction of jail-time credit for his consecutive terms, which he has received. ODRC further represents that its records accurately reflect that the two counts in CR-09-526893 are being served concurrently with each other but consecutively to the prison term being served in CR-09-526641. ODRC maintains mandamus is barred because a declaratory judgment action would afford an adequate remedy at law.

{¶7} Walker opposes the motion to dismiss on various grounds. First, he contends that ODRC's response was untimely. It was not. The docket reflects that ODRC received service on January 7, 2016. Civ.R. 12(A)(1) provides an answer is due within 28 days of service, which in this case would be February 4, 2016. The motion to dismiss was timely filed on February 3, 2016.

{¶8} Next, Walker contends he is entitled to mandamus relief pursuant to R.C. 2967.191. However, he does not address the relevant provisions of the Ohio Administrative Code, which “provides additional details regarding when a prisoner is entitled to jail-time credit and how to calculate a prison term, taking the credit into account.” *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 9. While Ohio Adm. Code 5120-2-04(F) requires jail-time credit to be applied to reduce each sentence that is being served *concurrently*, “the Administrative Code provides a different rule for calculating jail-time credit for offenders serving consecutive terms. In such cases, the code instructs that jail-time credit be applied only once, to the total term.”

Id. at ¶ 10, citing Ohio Adm. Code 5120-2-04(G). “When a defendant is sentenced to consecutive terms, the terms of imprisonment are served one after another. Jail-time credit applied to one prison term gives full credit that is due, because it reduces the entire length of the prison sentence.” *Id.* at ¶ 22.

{¶9} The number of days for jail-time credit that are reflected in the trial court’s journal entries is identical, and the trial court did not direct that the jail-time credit be aggregated or applied twice. In other words, the journal entries reflect that Walker was to receive 467 days of jail-time credit for his consecutive sentences, not 467 days in each case.

{¶10} Accordingly, Walker has failed to establish a claim upon which relief could be granted regarding the application of his jail-time credit.

{¶11} Walker further contends that the ODRC's records are incorrect. He believes that the records reflect that the receiving stolen property conviction and the having weapons while under disability conviction in CR-09-526893 are running consecutively, rather than concurrent to each other. He further believes that the record reflecting his sentence for burglary in CR-09-526641 is designated as concurrent rather than consecutive to the sentence in CR-09-526893. He attached an unauthenticated advisement from the Ohio Public Defender's office to his opposition to the motion to dismiss, which relates to another inmate. That advisement indicates that the "heading 'CS' designates whether your sentences are conSeCutive 'S' or conCurrent 'C' to each other." Walker has not presented any documents from the ODRC regarding the meaning of these designations. Further, we note that there is no "CS" heading on any documents that Walker submitted for our review. Exhibit E to the complaint contains a heading "CN" not "CS."

{¶12} Exhibit F that Walker submitted with his complaint contains the ODRC's position that the two counts of his sentence in CR-09-526893 are served concurrent but consecutive to CR-09-526641, for a total of five years. The ODRC's motion to dismiss provides that

Exhibit E shows that the sentences have been calculated exactly as per the court's instructions. The CN column on Exhibit E indicates which counts of different offenses are concurrent or consecutive. Relator's 18 month sentence has been designated with an 'S' to run concurrently with the weapons charge and burglary charge have been designated with a 'C' to indicate they are running consecutively to one another.

While Walker maintains that the ODRC is wrong about the meaning of the designations applied to his sentences, he has not produced any documents from the ODRC that suggest or reflect any inaccuracy.

{¶13} Walker has an adequate remedy at law to obtain a judicial determination of the meanings of the ODRC's designations through a declaratory judgment action. *State ex rel. Yonkings v. Ohio Dept. of Rehab. & Corr.*, 69 Ohio St.3d 70, 630 N.E.2d 365 (1994). ("The judgment of the court of appeals is affirmed for the reason stated in the court's opinion, i.e., declaratory judgment provides an adequate remedy to appellant and its availability was thus an appropriate basis to deny the writ.")

{¶14} For the foregoing reasons, the motion to dismiss is granted. The complaint for mandamus is dismissed.

{¶15} 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).

{¶16} Complaint dismissed.

TIM McCORMACK, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
PATRICIA ANN BLACKMON, J., CONCUR