

[Cite as *State ex rel. Lariche v. Sutula*, 2016-Ohio-5145.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104413

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STATE OF OHIO, EX REL.  
MICHAEL F. LARICHE

RELATOR

vs.

CUYAHOGA COUNTY COMMON PLEAS  
JUDGE JOHN SUTULA

RESPONDENT

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**JUDGMENT:**  
**WRIT DENIED**

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Writ of Mandamus  
Motion No. 496472  
Order No. 497437

**RELEASE DATE:** July 27, 2016

**FOR RELATOR**

Michael F. Lariche, pro se  
Inmate No. 673-712  
Cuyahoga County Jail  
P.O. Box 5600  
Cleveland, Ohio 44113

**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

TIM McCORMACK, P.J.:

{¶1} Michael Lariche has filed a complaint for a writ of mandamus. Lariche seeks an order from this court that requires Judge John D. Sutula to render a judgment with regard to a motion to vacate sentence filed in *State v. Lariche*, Cuyahoga C.P. No. CR-15-595648. Lariche also seeks an order that requires Judge Sutula to grant the motion to vacate sentence. For the following reasons, we decline to issue a writ of mandamus as sought by Lariche.

{¶2} Initially, we find that Lariche's complaint for a writ of mandamus is procedurally defective. Lariche has failed to comply with R.C. 2969.25(C), which provides that any inmate who files a complaint against a government entity or employee must include a statement that sets forth the balance in his inmate account for the preceding six months, as certified by the institutional cashier. *State ex rel. Ralios v. Iannotta*, Slip Opinion No. 2016-Ohio-3309; *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634. It must also be noted that the subsequent filing of the statement does not cure the defect. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982.

{¶3} In addition, we find that Lariche's request for a writ of mandamus is moot. Attached to Judge Sutula's motion for summary judgment is a copy of the judgment, journalized on May 13, 2016, which demonstrates that Judge Sutula has rendered a ruling with regard to Lariche's motion to vacate sentence. Judge Sutula has discharged his duty to proceed to judgment rendering the request for a writ of mandamus moot. *State*

*ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723; *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983); *Henderson v. Saffold*, 8th Dist. Cuyahoga No. 100406, 2014-Ohio-306.

{¶4} Finally, mandamus may not be employed to compel Judge Sutula to grant Lariche's motion to vacate. Mandamus may be employed to compel a court to exercise its judgment or to discharge a legal duty, but it may not be employed to control judicial discretion, even if the exercise of the judicial discretion is grossly abused. *State ex rel. Kirtz v. Corrigan*, 61 Ohio St.3d 435, 575 N.E.2d 186 (1991); *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987); *State v. Bullitt*, 8th Dist. Cuyahoga No. 103720, 2016-Ohio-3179.

{¶5} Accordingly, we grant Judge Sutula's motion for summary judgment. Costs to Lariche. 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).

{¶6} Writ denied.

TIM McCORMACK, PRESIDING JUDGE

MELODY J. STEWART, J., and  
SEAN C. GALLAGHER, J., CONCUR