

[Cite as *State ex rel. Robinson v. Gaul*, 2016-Ohio-7726.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104846

**STATE OF OHIO, EX REL.
SAMUEL ROBINSON**

RELATOR

vs.

JUDGE DANIEL GAUL

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Mandamus
Motion No. 499963
Order No. 500743

RELEASE DATE: November 4, 2016

FOR RELATOR

Samuel Robinson, pro se
Inmate No. 0142462
Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Nora Graham
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN T. GALLAGHER, J.:

{¶1} Samuel Robinson has filed a complaint for a writ of mandamus through which he seeks an order that requires Judge Daniel Gaul to issue a ruling with regard to a pro se motion to dismiss filed in *State v. Robinson*, Cuyahoga C.P. No. CR-14-590059. Judge Gaul has filed a motion to dismiss that is granted for the following reasons.

{¶2} Initially, we find that Robinson's complaint for a writ of mandamus is procedurally defective because he has failed to comply with R.C. 2969.25(A) and 2969.25(C)(1). Pursuant to R.C. 2969.25(A), an inmate that commences a civil action against a government entity or employee must file a sworn affidavit that contains a description of each civil action or appeal of a civil action filed in the previous five years in any state or federal court. *State ex rel. McGrath v. McDonnell*, 126 Ohio St.3d 511, 2010-Ohio-4726, 935 N.E.2d 830. R.C. 2969.25(C)(1) requires that Robinson file a statement setting forth his inmate account balance "for each of the preceding six months as certified by the institutional cashier." Robinson's failure to provide this court with a notarized affidavit that describes previously filed civil actions and a certified statement setting forth the balance in his inmate account requires dismissal of the complaint for a writ of mandamus. *Freed v. Bova*, 8th Dist. Cuyahoga No. 99908, 2013-Ohio-4378; *Turner v. Russo*, 8th Dist. Cuyahoga No. 87852, 2006-Ohio-4490.

{¶3} In addition, a review of the docket maintained in CR-14-590059 demonstrates that Robinson is represented by counsel. A defendant cannot act as

co-counsel in a case when he is represented by counsel. It is well established that although a defendant has the right to counsel or the right to act pro se, a defendant does not possess any right to “hybrid representation.” *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 22; *State v. Thompson*, 33 Ohio St.3d 1, 514 N.E.2d 407 (1987). The right to counsel and the right to act pro se are independent of each other and may not be asserted simultaneously. *State v. Gibson*, 8th Dist. Cuyahoga No. 100727, 2014-Ohio-3421. Because Robinson is represented by counsel, Judge Gaul possesses no legal duty to render a ruling with regard to the pro se motion to dismiss. *State ex rel. Worley v. Sutula*, 8th Dist. Cuyahoga No. 103923, 2016-Ohio-2730.

{¶4} Finally, a review of the docket in CR-14-590059 demonstrates that on September 19, 2016, Judge Gaul entered an order that provided “motion to dismiss pursuant to R.C. [2945.71] is denied,” which renders Robinson’s request for a writ of mandamus moot. “[R]elief is unwarranted because mandamus * * * will not compel the performance of a duty that has already been performed.” *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49, ¶ 4.

{¶5} Accordingly, we grant Judge Gaul’s motion to dismiss. Costs to Robinson. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of its entry upon the journal as required by Civ.R. 58(B).

{¶6} Complaint dismissed.

EILEEN T. GALLAGHER, JUDGE

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