

[Cite as *Houston v. Cuyahoga Cty. Court of Common Pleas*, 2016-Ohio-943.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103734

ANTONIO J. HOUSTON

RELATOR

vs.

**CUYAHOGA COUNTY COURT OF
COMMON PLEAS**

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 491839
Order No. 493119

RELEASE DATE: March 8, 2016

FOR RELATOR

Antonio J. Houston, pro se
SO# 0274816
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
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EILEEN T. GALLAGHER, J.:

{¶1} On November 4, 2015, the relator, Antonio Houston, commenced this mandamus action against the respondent, the Cuyahoga County Common Pleas Court, to compel the court to ensure that the prosecution complied with requests for discovery and bills of particulars and to adhere to his right to a speedy trial in the underlying cases, *State v. Houston*, Cuyahoga C.P. Nos. CR-15-597529-A, CR-15-597826-A, CR-15-598511-A, and CR-15-599941-A. On December 16, 2015, the respondent moved for summary judgment on the grounds of procedural defects, mootness, and premature filing. Houston never filed a response. For the following reasons, this court grants the respondent's motion for summary judgment and denies the application for a writ of mandamus.

{¶2} 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. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Furthermore, mandamus is not a substitute for appeal. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the

syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerningham v. Gaughan*, 8th Dist. Cuyahoga No. 67787, 1994 Ohio App. LEXIS 6227 (Sept. 26, 1994). 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. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 113 N.E.2d 14 (1953); *State ex rel. Connoles v. Cleveland Bd. of Edn.*, 87 Ohio App.3d 43, 621 N.E.2d 850 (8th Dist.1993).

{¶3} Attached to the respondent's motion for summary judgment are the state of Ohio's response to Houston's discovery requests and the bill of particulars that were filed in each of the underlying cases. These include several supplemental responses to the discovery requests. Houston is represented by counsel. These attachments establish that the state of Ohio has complied with Crim.R. 16, discovery and inspection, by providing the materials stated therein to counsel for the defendant pursuant to Crim.R. 16(B). To the extent that Houston is arguing that there were errors in the administration of discovery, appeal, if necessary, provides an adequate remedy at law to correct such errors. Accordingly, the "discovery and bill of particulars" claim for mandamus is not well founded.

{¶4} To the extent that Houston is claiming that mandamus should issue to compel the trial court to administer his case in all facets to ensure that his speedy trial rights are maintained, mandamus is not appropriate. The Supreme Court of Ohio has repeatedly ruled that a writ of mandamus will not issue to compel the observance of laws

generally. *State ex rel. Tillimon v. Weiher*, 65 Ohio St.2d 468, 605 N.E.2d 35 (1992), and *Cullen v. State ex rel. Toledo*, 105 Ohio St. 545, 138 N.E. 58 (1922).

{¶5} Houston in October 2015, filed pro se motions to dismiss for lack of speedy trial in the underlying cases. These motions have been pending less than four months. Thus, an inordinate amount of time has not elapsed to warrant mandamus to compel a ruling. Sup.R. 40(A)(3) provides that motions shall be ruled upon within 120 days from the date of filing. A complaint in mandamus to compel a ruling on motions that have been pending less than that time is premature. *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas*, 83 Ohio App.3d 684, 615 N.E.2d 689 (8th Dist.1992).

{¶6} Houston also did not comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. This also is sufficient reason to deny the mandamus, deny indigency status, and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842; *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420; and *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378 — defect may not be cured by subsequent filings.

{¶7} The petition is defective because it is improperly captioned. Houston styled this petition as “Antonio J. Houston v. Cuyahoga County Court of Common Pleas.”

R.C. 2731.04 requires that an application for a writ of mandamus “must be by petition, in the name of the state on the relation of the person applying.” This failure to properly

caption a mandamus action is sufficient grounds for denying the writ and dismissing the petition. *Maloney v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 181 N.E.2d 270 (1962).

{¶8} Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of mandamus. 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).

{¶9} Writ denied.

EILEEN T. GALLAGHER, JUDGE

LARRY A. JONES, SR., A.J., and
EILEEN A. GALLAGHER, J., CONCUR