

[Cite as *State v. Bullitt*, 2016-Ohio-945.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103774

STATE OF OHIO

RESPONDENT

vs.

DEAUNTE BULLITT

RELATOR

JUDGMENT:
WRIT DISMISSED

Writ of Mandamus
Motion No. 491655
Order No. 493421

RELEASE DATE: March 7, 2016

FOR RELATOR

Deaunte Bullitt, pro se
Inmate #651113
Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio 44901

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MELODY J. STEWART, J.:

{¶1} On November 13, 2015, the relator, Deaunte Bullitt, commenced this “writ of error/mandamus” action to dismiss or grant him a new trial in the underlying case, *State v. Bullitt*, Cuyahoga C.P. No. CR-12-565262-C, in which a jury found him guilty of drug trafficking with major drug offender, juvenile, and forfeiture specifications; drug possession (merged with the trafficking charge at sentencing); possession of criminal tools; and tampering with evidence. The trial judge sentenced him to a total of eleven years. Bullitt maintains that he was an innocent visitor to the premises when the police made their drug raid and that he knew nothing about the drugs. In this proceeding, he argues that the trial court deprived him of a fair trial by denying his motion for separate trials. On December 10, 2015, the respondent, through the Cuyahoga County prosecutor, moved to dismiss for procedural defects and the unsuitability of the remedy sought. On December 21, 2015, Bullitt filed his response brief. For the following reasons, this court grants the motion to dismiss and dismisses this writ action.

{¶2} Bullitt’s efforts to obtain relief through a writ of error are ill-founded. Such a writ is no part of Ohio law. *State v. Hayslip*, 90 Ohio St. 199, 170 N.E. 335 (1914); *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967); and *State ex rel. Bey v. Stokes*, 8th Dist. Cuyahoga No. 74038, 1998 Ohio App. LEXIS 2604 (June 11, 1998).

{¶3} 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); and *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). Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108.

{¶4} The issue of whether the trial court erred or abused its discretion in denying the motion for separate trials is appropriately reviewed on appeal, not mandamus. Bullitt's own authority, *State v. Abbott*, 152 Ohio St. 228, 89 N.E.2d 147 (1949), shows this. In *Abbott*, the issue of separate trials was reviewed on appeal, not through a writ action. The trial judge's denial of the motion on the record during a pretrial conference provided sufficient notice and basis to appeal the ruling. Accordingly, the adequate remedy of appeal precludes a writ of mandamus.

{¶5} Moreover, the petition is defective because it is improperly captioned. Bullitt styled this petition as "*State of Ohio v. Deaunte Bullitt*." 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). Nor in the caption did Bullitt identify a respondent and the corresponding address as required by Civ.R. 10(A). The failure to caption the case correctly creates uncertainty as to the identity of the respondent. This court has held that this deficiency alone also warrants dismissal. *State ex rel. Calloway v. Court of Common Pleas of Cuyahoga Cty.*, 8th Dist. Cuyahoga No. 71699, 1997 Ohio App. LEXIS 79452 (Feb. 27, 1997); and *Jordan v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 96013, 2011-Ohio-1813.

{¶6} Bullitt 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. Although Bullitt filed such a statement with his reply brief on December 21, 2015, the Supreme Court of Ohio in *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378, ruled that the defect may not be cured by subsequent filings.

{¶7} Accordingly, this court grants the respondent’s motion to dismiss and dismisses the application for a “writ of error/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).

{¶8} Writ dismissed.

MELODY J. STEWART, JUDGE

LARRY A. JONES, SR., A.J., and
KATHLEEN ANN KEOUGH, J., CONCUR