

[Cite as *Chambers v. Gaul*, 2017-Ohio-2765.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105229

DONNYELL CHAMBERS

RELATOR

vs.

JUDGE DANIEL GAUL

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 502941
Order No. 506258

RELEASE DATE: May 10, 2017

FOR RELATOR

Donnyell Chambers, pro se
Inmate No. 0137613
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Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

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Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center, 8th Floor
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EILEEN T. GALLAGHER, P.J.:

{¶1} On December 5, 2016, the relator, Donnyell Chambers, commenced this mandamus action against the respondent, Judge Daniel Gaul. Although the relief Chambers seeks is difficult to discern,¹ it appears that the gravamen of this mandamus action is to compel the judge to rule on motions in the underlying cases, *State v. Chambers*, Cuyahoga C.P. No. CR-15-597676-A (rape and kidnapping), and *State v. Chambers*, Cuyahoga C.P. No. CR-15-569239-A (felonious assault, attempted felonious assault, and menacing). In the rape case, one of his former attorneys filed a motion to suppress evidence on March 22, 2016. Chambers filed pro se motions to dismiss for lack of speedy trial in both of the underlying cases on September 27, 2016. On December 21, 2016, the respondent judge, through the Cuyahoga County prosecutor, moved for summary judgment. Chambers never filed a response. For the following reasons, this court grants the 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

¹In the “Relief” section, Chambers asks this court to “thoroughly investigate the case summary and bond report of the case No. CR-15-597676 and dismiss or cause the dismissal of that case.” In his supporting brief, Chambers asserts that he is in custody because of a fabricated police report and the state’s illegal possession of his DNA.

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. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977).

{¶3} The court has discretion in issuing mandamus. In *Mettler v. Stratton*, 139 Ohio St. 86, 38 N.E.2d 393 (1941), paragraph one of the syllabus, the Supreme Court of Ohio ruled: “Mandamus is not a writ of right and the issuance of the peremptory writ rests in the sound discretion of the court.” In *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph seven of the syllabus, the Supreme Court of Ohio reaffirmed this principle and considered the various elements to be weighed in exercising discretion:

the exigency which calls for the exercise of such discretion, the nature and extent of the wrong or injury which would follow a refusal of the writ, and other facts which have a bearing on the particular case. * * * Among the facts and circumstances which the court will consider are the applicant’s rights, the interests of third persons, the importance or unimportance of the case, the applicant’s conduct, the equity and justice of the relator’s case,

public policy and the public's interest, whether the performance of the act by the respondent would give the relator any effective relief, and whether such act would be impossible, illegal, or useless.

11 Ohio St.2d at 161-162. *State ex rel. Bennett v. Lime*, 55 Ohio St.2d 62, 378 N.E.2d 152 (1978).

{¶4} Under Ohio law, hybrid representation — a criminal defendant may represent himself while also being represented by counsel — is prohibited. *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, and *State v. Pizzaro*, 8th Dist. Cuyahoga No. 94849, 2011-Ohio-611. Therefore, Chambers's motions to dismiss for lack of a speedy trial are not properly before the court, and the respondent has no duty to rule on them.

{¶5} In reviewing the docket of the underlying cases, this court notes that certain matters have delayed the resolution of the case and, thus, of the subject motion to suppress. Chambers has filed multiple pro se motions, including motions for self-representation, to disqualify the judge, and to disqualify court-appointed counsel. Defense counsel have also moved to withdraw. The docket shows that five lawyers have represented Chambers. The trial court has set the case for trial four times and the motion to suppress for hearing two times.² The trial court has continued the case for further discovery and negotiations. On February 23, 2017, the court ordered independent testing of the DNA at state's expense.

² The docket shows that on April 10, 2017, the trial court has scheduled trial for June 7, 2017.

{¶6} Mandamus may not lie to control judicial discretion. In *State ex rel. Richard v. Gorman*, 83 Ohio App.3d 684, 686, 615 N.E.2d 689 (8th Dist.1992), this court recognized that compelling a trial court to rule prematurely on a matter would usurp a trial judge's discretion and his "inherent power 'to regulate procedure that justice might result,'" quoting *Aluminum Industries, Inc. v. Egan*, 61 Ohio App. 111, 115, 22 N.E.2d 459 (1st Dist.1938). This court also noted some of the variables, such as the need for experts, that could cause a trial court in the exercise of its discretion to delay in ruling on any given motion. After considering the difficulties in the underlying case as shown by the docket, this court in the exercise of its discretion declines to issue the writ of mandamus to compel the trial judge to rule on the subject motion in order not to interfere with that court's discretion and ability to regulate procedure.

{¶7} Moreover, to the extent that Chambers seeks to have this court investigate the trial court and the proceedings in order to dismiss the underlying case, that is an inappropriate use of mandamus. The correction of errors, if any, is the purpose of appeal.

{¶8} Relator 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 — the defect may not be cured by subsequent filings.

{¶9} Chambers’s petition is defective because it is improperly captioned. He styled this petition as “Chambers v. Gaul.” 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).

{¶10} 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).

{¶11} Writ denied.

EILEEN T. GALLAGHER, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR