

[Cite as *State v. Frett*, 2017-Ohio-9027.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106207

STATE OF OHIO

RELATOR

vs.

DEMETRIOUS A. FRETT

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 510804
Order No. 511945

RELEASE DATE: December 8, 2017

FOR RELATOR

Demetrious A. Frett
Inmate No. A620151
Richland Correctional Institution
1001 Olivesburg Road
Mansfield, Ohio 44905

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MELODY J. STEWART, J.:

{¶1} On September 6, 2017, the relator, Demetrious Frett, commenced this mandamus action to compel the trial court to rule on his motions to withdraw guilty plea that he filed in the underlying cases, *State v. Frett*, Cuyahoga C.P. Nos. CR-10-544745-A and CR-11-552762-A, on June 26, 2017, and November 15 and 17, 2016. On October 2, 2017, the Cuyhoga County Prosecutor on behalf of the respondent moved for summary judgment on the grounds of mootness. Attached to the dispositive motion were certified copies of the September 28, 2017 journal entries in the underlying cases that denied the November 2016 motions to withdraw guilty plea. A review of the docket also shows that the trial court on August 22, 2017, denied Frett's June 26, 2017 motions to add to the motion to withdraw guilty plea. Frett never filed a response to the motion for summary judgment. The attachments to the motion for summary judgment and the docket establish that the trial court fulfilled its duty to rule on the subject motions and that Frett has received his desired relief. This mandamus actions is moot.

{¶2} Additionally, Frett's petition is defective because it is improperly captioned. He styled this petition as "*State of Ohio v. Demetrius Frett.*" 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).

Moreover, 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); *Jordan v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 96013, 2011-Ohio-1813.

{¶3} The relator has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the relator within the previous five years in any state or federal court. The relator's failure to comply with R.C. 2969.25 warrants dismissal of the complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594 and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. 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; 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.

{¶4} Accordingly, this court grants the 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).

{¶5} Writ denied.

MELODY J. STEWART, JUDGE _____

EILEEN A. GALLAGHER, P.J., and
MARY J. BOYLE, J., CONCUR