

[Cite as *State ex rel. Young v. Gall*, 2018-Ohio-754.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106533

**STATE OF OHIO, EX REL.
GEORGE R. YOUNG**

RELATOR

vs.

HONORABLE STEVEN E. GALL, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 514015
Order No. 514530

RELEASE DATE: February 27, 2018

FOR RELATOR

George R. Young, pro se
Inmate No. 640832
Warren Correctional Institution
P.O. Box 120
Lebanon, Ohio 45036

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

TIM McCORMACK, J.:

{¶1} The relator, George R. Young (“Young”), seeks a writ of mandamus to compel respondent to rule on a motion for relief from judgment. For the reasons that follow, we deny the application for a writ of mandamus.

{¶2} On November 27, 2017, Young commenced this mandamus action to compel the trial court to rule on a motion for relief from judgment filed on December 13, 2016, in the underlying case, Cuyahoga C.P. No. CR-12-566461. On January 19, 2018, the Cuyahoga County Prosecutor, on behalf of the respondent judge, moved for summary judgment on the grounds of mootness, and further argued that Young failed to comply with requirements set forth in R.C. 2969.25(A) and 2969.25(C). Attached to the motion for summary judgment was a certified copy of a January 18, 2018 order denying Young’s motion for relief from judgment. The attached journal entry and the docket in the underlying case establish that Young has received his requested relief, that the respondent judge has fulfilled his duty to resolve the motion, and that the action is moot.

{¶3} Further, Young has failed to comply with R.C. 2969.25(A) when he filed his application. This statute provides:

At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court. The affidavit shall include all of the following for each of those civil actions or appeals:

(1) A brief description of the nature of the civil action or appeal;

- (2) The case name, case number, and the court in which the civil action or appeal was brought;
- (3) The name of each party to the civil action or appeal;
- (4) The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate's counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award.

Young submitted no such affidavit in this case. Young's failure to comply with R.C. 2969.25(A) is grounds for dismissal of the complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 696 N.E.2d 594 (1998), and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 685 N.E.2d 1242 (1997). Young 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 is also sufficient reason to deny 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. Further, the defect may not be cured by subsequent filings. *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378,

{¶4} Therefore, we grant the respondent judge's motion for summary judgment.

Costs assessed against respondent. Costs waived. The clerk is directed to serve upon the parties notice of this judgment and its date of entry on the journal. Civ.R. 58(B).

{¶5} Writ denied.

TIM McCORMACK, JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR