

IN THE SUPREME COURT OF OHIO

STATE EX REL. DAVID BROWN)	CASE No. 21-1568
)	
Relator)	
)	
v.)	
)	
TAMMY O'BRIEN, JUDGE)	ORIGINAL ACTION IN
COURT OF COMMON PLEAS)	MANDAMUS
)	
Respondent.)	
)	

RESPONDENT'S MOTION TO DISMISS AMENDED COMPLAINT FOR
MANDAMUS

David Brown

Inmate # #147340
Summit County Jail
205 E. Crosier Street
Akron, OH 44311
Relator – pro se

SHERRI BEVAN WALSH

Prosecuting Attorney

John Galonski, Reg. No. 0061792

Assistant Prosecuting Attorney
53 University Ave., 7th Floor
Akron, OH 44308
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Attorney for Respondent Judge O'Brien

Now comes Respondent, by and through undersigned counsel, and respectfully moves this Court to dismiss Relator's Amended Complaint for a Writ of Mandamus as issuance of such an extraordinary writ would be inappropriate given that Relator does not meet the criteria required for its issuance.

MEMORANDUM IN SUPPORT

I. STATEMENT OF FACTS

Relator was indicted for Murder (with a Firearm Specification) and Felonious Assault (with a Firearm Specification) in Summit County Common Pleas Case No. CR 2020-10-3021 (the "Case"). (Exhibit A). This Case is pending before the Honorable Judge Tammy O'Brien. The speedy trial issue has been addressed by Judge O'Brien and the matter has been set for trial on February 7, 2022. (Exhibit B).

II. LAW AND ARGUMENT

A. A Writ of Mandamus is not appropriate in this case.

To obtain a writ of mandamus, Mr. Brown must establish a clear legal right to the requested relief, a clear legal duty on the Respondent's part to provide it, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Roberts v. Marsh*, 156 Ohio St.3d 440, 2019-Ohio-1569, 128 N.E.3d 222, reconsideration denied, 156 Ohio St.3d 1455, 2019-Ohio-2780, 125 N.E.3d 938, citing *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6.

Here, Relator makes several bare assertions and requests that this Court grant him an extraordinary writ without any supporting authority.

Further, Relator has adequate remedies at law should he wish to raise any issues related to speedy trial rights during either his current case or during any future appeal.

See *Drake v. Sutula*, 8th Dist. Cuyahoga No. 76000, 1999 WL 285034, *2. Accordingly, the extraordinary writ of mandamus should not be granted in this instance. Finally, a writ of mandamus isn't the proper vehicle to assert speedy trial issues. *State ex rel. Thomas v. Gaul*, 160 Ohio St.3d 227 (2020).

B. Relator fails to fulfill the requirements of R.C. § 2969.25.

Relator's request for a Writ of Mandamus does not comply with the statutory requirements of R.C. § 2969.25 and must therefore be dismissed.

Under R.C. § 2969.25, a petitioner must supply an affidavit describing each civil action or appeal filed by petitioner within the previous five years in any state or federal court. This Court has long held that failure to comply with this requirement warrants immediate dismissal of Relator's complaint for a writ. See *Robinson v. Fender*, 2020-Ohio-458; *State ex rel. Johnson v. Ohio Adult Parole Auth.*, 95 Ohio St.3d 463, 2002-Ohio-2481, 768 N.E.2d 1176; *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

Accordingly, Relator's complaint for a Writ of Mandamus must be dismissed.

C. Relator fails to provide an affidavit to support his claim.

Relator has failed to provide an affidavit that is a statutory requirement under R.C. § 2731.04.

D. Relator is not permitted to engage in hybrid representation.

To compound the deficiencies of Relator's instant Complaint, he also has no constitutional right to hybrid representation, as Ohio does not permit it, and there appears to be no authority for the notion that hybrid representation is permissible in this matter.

See *State v. Walters*, 9th Dist. Summit No. 23795, 2008-Ohio-1466, ¶ 19, and *State v. Rice*, 9th Dist. Medina No. 08CA0054–M, 2009-Ohio-5419, ¶ 8.

Instead, there is significant contrary authority. See *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, paragraph one of the syllabus (“In Ohio, a criminal defendant has the right to representation by counsel or to proceed pro se with the assistance of standby counsel. However, these two rights are independent of each other and may not be asserted simultaneously.”); see also *United States v. Fontana*, 869 F.3d 464, 472-73 (6th Cir.2017); *United States v. Stinson*, 761 Fed. Appx. 527, 530 (6th Cir.2019).

Even the United States Supreme Court, when it upheld a defendant’s right to self-representation at trial, stated that “When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel.” *Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 2541, 45 L.Ed. 2d 562 (1975).

In this case, Relator is represented in the underlying Case by Attorney Scott Reilly. Relator now seeks to circumvent this representation and to file this instant Complaint for Writ of Mandamus via impermissible hybrid representation. Accordingly, Relator’s current complaint is not properly before this Court and should therefore be dismissed.

III. CONCLUSION

The issuance of such an extraordinary writ would be improper as Relator does not meet the criteria required for its issuance.

Respectfully submitted,

SHERRI BEVAN WALSH
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Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by Regular U.S. Mail and/or by electronic mail on this 27th day of January 2022 to:

David Brown
Inmate # #147340
Summit County Jail
205 E. Crosier Street
Akron, OH 44311

Attorney Scott Reilly
333 S. Main Street
Suite 200
Akron, OH 44308

/s/ John Galonski
John Galonski, #0061792
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53 University Avenue, 7th Floor
Akron, OH 44308
Attorney for Respondent

SANDRA NORTON

2020 OCT 23 PM 12: 52

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO**

SUMMIT COUNTY
CLERK OF COURTS

INDICTMENT TYPE: DIRECT

CASE NO. CR 2020-10-3021

INDICTMENT FOR: MURDER (1) §2903.02(A), 2903.02(D), 2929.02(B) UF, FIREARM SPECIFICATION - 3 YEAR (1) 2941.145(A); MURDER (1) §2903.02(B), 2903.02(D), 2929.02(B) UF, FIREARM SPECIFICATION - 3 YEAR (1) 2941.145(A); FELONIOUS ASSAULT (1) §2903.11(A)(2), 2903.11(D)(1)(A) F2, FIREARM SPECIFICATION - 3 YEAR (1) 2941.145(A)

In the Common Pleas Court of Summit County, Ohio, of the term of SEPTEMBER in the year of our Lord, Two Thousand Twenty.

The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, being duly impaneled and sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their oaths, IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO,

COUNT ONE

DO FIND AND PRESENT, that **DAVID ANGELO BROWN** on or about the 3rd day of July, 2020, in the County of Summit and State of Ohio aforesaid, did commit the crime of **MURDER** in that he did purposely cause the death of [REDACTED] in violation of Section 2903.02(A), 2903.02(D), 2929.02(B) of the Ohio Revised Code, an UNCLASSIFIED FELONY, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

SPECIFICATION ONE TO COUNT ONE O.R.C. 2941.145(A)
FIREARM SPECIFICATION - 3 YEAR

The Grand Jurors further find and specify that David Angelo Brown had a firearm on or about his person or under his control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense, in violation of Section 2941.145(A) of the Ohio Revised Code, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

COUNT TWO

And the Grand Jurors of the State of Ohio, within and for the body of the County of Summit aforesaid, on their oaths in the name and by the authority of the State of Ohio, DO FURTHER FIND AND PRESENT, that **DAVID ANGELO BROWN** on or about the 3rd day of July, 2020, in the County of Summit and State of Ohio aforesaid, did commit the crime of **MURDER** in that he did cause the death of [REDACTED], as a proximate result of the offender committing or attempting to commit an offense of violence that is a felony of the first or second degree, to wit: Felonious Assault, ORC 2903.11(A)(2), in violation of Section 2903.02(B), 2903.02(D), 2929.02(B) of the Ohio Revised Code, an UNCLASSIFIED FELONY, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

SPECIFICATION ONE TO COUNT TWO O.R.C. 2941.145(A) **FIREARM SPECIFICATION - 3 YEAR**

The Grand Jurors further find and specify that David Angelo Brown had a firearm on or about his person or under his control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense, in violation of Section 2941.145(A) of the Ohio Revised Code, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

COUNT THREE

And the Grand Jurors of the State of Ohio, within and for the body of the County of Summit aforesaid, on their oaths in the name and by the authority of the State of Ohio, DO FURTHER FIND AND PRESENT, that **DAVID ANGELO BROWN** on or about the 3rd day of July, 2020, in the County of Summit and State of Ohio aforesaid, did commit the crime of **FELONIOUS ASSAULT** in that he did knowingly cause or attempt to cause physical harm to [REDACTED] by means of a deadly weapon or dangerous ordnance, to wit: a handgun, in violation of Section 2903.11(A)(2), 2903.11(D) (1)(a) of the Ohio Revised Code, a FELONY OF THE SECOND DEGREE, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

SPECIFICATION ONE TO COUNT THREE O.R.C. 2941.145(A) **FIREARM SPECIFICATION - 3 YEAR**

The Grand Jurors further find and specify that David Angelo Brown had a firearm on or about his person or under his control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense, in violation of Section 2941.145(A) of the Ohio Revised Code, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Ohio.

Criminal Case No. CR 2020-10-3021

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Prosecutor, County of Summit, by

S/ Jennie R. Shuck
Assistant Prosecuting Attorney

Date: 10/23/20

A TRUE BILL

S/ Sherri Bevan Walsh/ps
Sherri Bevan Walsh, Prosecutor
County of Summit, Ohio

Lisa M. Weigand
Grand Jury Foreperson/Deputy Foreperson

Exhibit B

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT****THE STATE OF OHIO****Case No. CR-2020-10-3021****vs.****DAVID ANGELO BROWN****JOURNAL ENTRY**

On September 23, 2021, comes the Assistant Prosecuting Attorneys, JENNIE SHUKI and JOSEPH MCALEESE on behalf of the State of Ohio, the Defendant, DAVID ANGELO BROWN, with defense counsel, SCOTT A. RILLEY, all being present via ring central video conferencing; the Defendant having waived the right to be physically present and consented to proceed via video, due to restrictions regarding the coronavirus (COVID-19).

The suppression hearing in this case was not held and the motion for suppression will remain.

The following motions filed by the Defendant, pro se: motion to dismiss, motion for bond reduction and motion for speedy trial, are stricken as Defendant cannot have hybrid representation

IT IS HEREBY ORDERED that the trial in this case is confirmed set for February 7, 2022 at 9:00 A.M. and final pretrial for January 6, 2022 at 8:30 A.M.



TAMMY O'BRIEN, Judge
Court of Common Pleas
Summit County, Ohio

/tmv

cc: Ass't. Prosecutor Jennie Shuki
Attorney Scott A. Riley
Registrar's Office