

IN THE SUPREME COURT OF OHIO

STATE ex rel. CHARLES TINGLER)	
)	CASE NO. 2022-1558
Relator)	
)	Original Action in Mandamus
)	
vs.)	
)	
BUCYRUS POLICE DEPT., et al.,)	
)	
Respondents.)	

**RESPONDENT CRAWFORD COUNTY SHERIFF'S OFFICE'S
MOTION TO DISMISS RELATOR'S COMPLAINT FOR WRIT OF MANDAMUS**

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Respondent Crawford County Sheriff's Office respectfully requests this Court dismiss Relator's Complaint for Writ of Mandamus under Sup. Ct. Prac. R. 12.02(B) and Civ.R. 12(B)(6). This Motion is supported by the following Memorandum of Law, which is incorporated here.

Respectfully submitted,

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MEMORANDUM OF LAW

I. INTRODUCTION

This case is one of more than 60 cases filed in this Court by Relator Charles Tingler since December 13, 2022. Not surprisingly, Relator has been deemed a vexatious litigator in other Ohio courts.¹

In this mandamus complaint, Relator purportedly sues in mandamus to compel the Respondent Crawford County Sheriff's Office to investigate or criminally charge Prosecutor

¹ See https://www.supremecourt.ohio.gov/docs/Clerk/vexatious/tinglerC_091622.pdf

Matthew Crall for purportedly failing to properly use funds under R.C. 325.12 (Furtherance of Justice Fund). (Comp. at p. 2, 4.) Relator's claim has no merit and is based on legal conclusions. He does not meet the stringent burdens to obtain extraordinary relief in mandamus.

At the outset, Relator's complaint is frivolous and barred because the Sheriff's Department is not sui juris or capable of being sued, and he fails to comply with the mandatory verification requirements under S.Ct. Prac. R. 12.02(B). Relator's complaint is also unequivocally barred because he fails to meet any of the elements of mandamus. He has an adequate remedy at law under R.C. 2935.09/10. Furthermore, Relator unequivocally cannot establish a clear legal duty of a sheriff or that he possesses a clear legal right to compel what is a discretionary investigation/charge sufficient to establish mandamus relief here.

Undeterred by the established law prohibiting his complaint, Relator filed a complaint that is untenable as a matter of law.

II. LAW AND ARGUMENT

A. This Court must dismiss Relator's complaint.

Mandamus is an extraordinary remedy "to be issued with great caution and discretion and only when the way is clear." *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 166, 364 N.E.2d 1 (1977), citing *State ex rel. Kriss v. Richards*, 102 Ohio St. 455, 132 N.E. 23 (1921). A relator seeking a writ of mandamus must establish by clear and convincing evidence (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental unit to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6.

"In order for a court to dismiss a [mandamus] complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, it must appear beyond doubt that [the relator]

could prove no set of facts warranting relief, after all factual allegations of the complaint are presumed true, and all reasonable inferences are made in [the relator's] favor.” *State ex rel. Natl. Elec. Contrs. Assn. v. Bur. of Emp. Servs.*, 83 Ohio St.3d 179, 181, 699 N.E.2d 64 (1998). But, the “unsupported conclusions of a complaint are not considered admitted and are not sufficient to withstand a motion to dismiss.” *State ex rel. Seikbert v. Wilkinson*, 69 Ohio St.3d 489, 490, 633 N.E.2d 1128 (1994). Here, Relator cannot establish any of the three required elements of a writ of mandamus. In fact, Relator’s complaint is fatally flawed from its inception.

1. The Crawford County Sheriff’s Office is not sui juris.

Relator’s complaint must be dismissed because the Respondent Crawford County Sheriff’s Office is not sui juris. Courts applying Ohio law consistently hold that a sheriff’s department or office is not sui juris—that is, it is not capable of being sued as a matter of law. See *Batchik v. Summit County Sheriff’s Dept.*, 9th Dist. No. 13783, 1989 WL 26084; *Parmelee v. Schnader*, 7th Dist. Mahoning No. 17 MA 0026, 2018-Ohio-707, 2018 WL 1110474, ¶ 39; *Carmichael v. City of Cleveland*, 571 F. App’x 426, 435 (6th Cir. 2014) (under Ohio law, a county sheriff’s office is not a legal entity that is capable of being sued”).

2. Relator’s Complaint also must be denied because it does not comply with Sup. Ct. Prac. R. 12.02(B).

Just as a writ of mandamus filed under R.C. 2713.04 requires a supporting affidavit, this Court’s Rules of Practice also has the same basic requirement. S.Ct. Prac. R. 12.02(B).

While Relator argues he is not required to have an affidavit, Ohio law soundly rejects that argument. Subsection (1) of S.Ct. Prac. R. 12.02(B) makes clear all complaints **must** be accompanied by an affidavit, by using the word “shall” rather than a more equivocal word such as may or should. See S.Ct.Prac.R. 1.06(A). Further, as explained in subsection (2) of S.Ct. Prac. R. 12.02(B), the required affidavit must be based on personal knowledge. Without an

affidavit attesting to the veracity of Relator's claims, he cannot satisfy the competent evidence requirement of S.Ct. Prac. R. 12.02(B).

This Court has “routinely dismissed original actions, other than habeas corpus, that were not supported by an affidavit expressly stating that the facts in the complaint were based on the affiant's personal knowledge. *State ex rel. Hackworth v. Hughes*, 97 Ohio St.3d 110, 2002-Ohio-5334, 776 N.E.2d 1050, ¶ 24; *State ex rel. Sanduskians for Sandusky v. Sandusky*, 2022-Ohio-3362, ¶ 24; See *State ex rel. Tobin v. Hoppel*, 96 Ohio St.3d 1478, 2002-Ohio-4177, 773 N.E.2d 554; *State ex rel. Shemo v. Mayfield Hts.* (2001), 92 Ohio St.3d 324, 750 N.E.2d 167. Unsupported conclusions in a petition for a writ of mandamus are not considered admitted and are not sufficient to withstand a motion to dismiss. *State ex rel. Clark v. Krichbaum*, 7th Dist. Mahoning No. 07-MA-66, 2007-Ohio-3185, ¶ 11; *State ex rel. Hickman v. Capots* (1989), 45 Ohio St.3d 324, 544 N.E.2d 639.

Relator is a pro se litigant, but that does not excuse him from strict compliance with the applicable rules of this Court. “ ‘[P]ro se litigants ... are held to the same standard as litigants who are represented by counsel.’ ” *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402, ¶ 1; *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448, 800 N.E.2d 25, ¶ 10. Under Ohio law, pro se litigants “are not to be accorded greater rights and must accept the results of their own mistakes and errors.” (Citation omitted.) *Holfinger v. Stonespring/Carespring, L.L.C.*, 2nd Dist. Montgomery No. 27091, 2016-Ohio-7982, ¶ 31 citing *Meyers v. First Nat. Bank of Cincinnati*, 3 Ohio App.3d 209, 210, 444 N.E.2d 412 (1st Dist.1981).

Relator's failure to comply with the Ohio Supreme Court Practice Rule 12.02(B) is fatal to his claims because he has provided no competent evidence to this Court in support of the allegations made in the Complaint.

3. Relator's complaint also must be denied because he has an adequate remedy at law.

Relator has an adequate remedy at law under R.C. 2935.09/10. Further, Relator failed to establish clearly and convincingly that he does not have an adequate remedy at law to entitle him to mandamus relief. Relator's legal conclusions are insufficient. *State ex rel. Seikbert, supra* ("unsupported conclusions of a complaint are not considered admitted and are not sufficient to withstand a motion to dismiss.")

Under R.C. 2935.09/10, Relator has an adequate remedy for his claim to have criminal charges brought against the Crawford County prosecutor. Ohio Revised Code Section 2935.09 in pertinent part states: "A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate." Under R.C. 2935.09, a reviewing official is defined as "a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate."

Ohio law is well established that an adequate remedy at law exists and is fatal to Relator's complaint. See e.g., *State v. Mbodji*, 129 Ohio St.3d 325, 326, 951 N.E.2d 1025 (2011); see also, *State ex rel. Whittaker v. Lucas Cty. Prosecutor's Office*, 164 Ohio St.3d 151, 152, 172 N.E.3d 143 (2021)(R.C. 2935.09 allows a private citizen to file an affidavit alleging a criminal offense); *State ex rel. Kirin v. Krichbaum*, 7th Dist. Mahoning No. 16 MA 0011, 2016-

Ohio-887 ¶7(concerning Relator's desire to pursue criminal charges, he possesses an adequate remedy at law through R.C. 2935.09(D) which provides a formal mechanism by which a private citizen can seek to have criminal charges filed). Because he has an adequate remedy at law, Relator's claim must be dismissed.

4. Relator also does not have a clear legal right to compel law enforcement to investigate/charge, and a sheriff's office does not have a clear legal duty to investigate/charge based merely on Relator's speculative claim.

Relator fails to state a claim for relief in mandamus because he fails to allege facts that if proved would establish a clear legal duty to act on the part of this Respondent. Relator's desire for law enforcement to file a police report does not clearly and convincingly establish a clear legal duty. It also does not clearly and convincingly establish that he possesses a clear legal right to compel an investigation or criminal charge. Relator fails to cite any case or any law that would establish a clear legal duty or compel mandamus relief against a sheriff's office to criminally investigate/charge a county prosecutor for purportedly failing to comply with R.C. 325.12. That Section actually requires a prosecutor to post a bond fixed by a common pleas/probate court and for which **the auditor already reviews these expenditures annually**. See R.C. 325.12. The Respondent's failure to further pursue a criminal investigation/charges upon Relator's conclusory claims of wrongdoing that he believes is "almost" embezzlement or has the "appearance" to him of being wrongful, does not establish a clear right to mandamus relief.²

² Setting aside improper speculation, Relator's conclusions also do not allege wrongdoing by the prosecutor in any legally meaningful way. To use furtherance of justice moneys, a county prosecuting attorney determines that the expense is an expense he incurs in the performance of his official duties and in the furtherance of justice. R.C. 325.12(A) and (B); see also *State v. Kelly*, 4th Dist. No. 15CA11, 2016-Ohio-8582, at ¶17 ("[m]eals are considered proper expenses for a sheriff's office's [furtherance of justice moneys]"); see 1988 Op. Att'y Gen. No. 88-100 (syllabus) ("[u]nder R.C. 325.071, a county sheriff may expend funds for expenses, including meals ... which are incurred by him in the performance of his official duties and which he

The law is well established that mandamus may never issue when the matter is doubtful. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1. Other than arguing overgeneralized duties of sheriffs in R.C. 311.07(A), Relator fails to allege – let alone clearly and convincingly show – that Relator has a clear legal right or that a sheriff’s office has a clear legal duty to charge or investigate or seek appointment of a special prosecutor under these circumstances. The law is well established that law enforcement has discretion over how they perform their duties. *Fuller v. Cuyahoga Metro. Hous. Auth.*, 8th Dist. Cuyahoga No. 92270, 2009-Ohio-4716, ¶19 (“Police officers have discretion under most circumstances in deciding how to perform their duties.”); *see also, McClesky v. Kemp*, 481 U.S. 279, 297 (1987) (“discretion is essential to the criminal justice process”); *See also State ex rel. Evans v. Tieman*, 2019-Ohio-2411, 157 Ohio St. 3d 99, 102, 131 N.E.3d 930, 933. In fact there is no “constitutional, statutory, or common law right that a private citizen has to require a public official to investigate or prosecute a crime.” *See White v. City of Toledo*, 217 F. Supp. 2d 838, 841 (N.D. Ohio 2002)(law is “clear” that “there is no constitutional, statutory, or common law right that a private citizen has to require a public official to investigate or prosecute a crime” and holding such “discretionary public duties ... are enforced by public opinion, policy, and the ballot.”) “For mandamus to lie, the duty ‘must be specific, definite, clear and unequivocal.’ ” *State ex rel. Neal v. Cincinnati*, 2021-Ohio-1276, ¶ 9, appeal not allowed, 2021-Ohio-2401, ¶ 9, 163 Ohio St. 3d 1505, 170 N.E.3d 903; *State ex rel. Bd. of Tax Appeals v. Morgan Cnty. Budget Comm’n*, 174 Ohio St. 297, 299, 189 N.E.2d 124, 125 (1963)(“In order to prevail in an action in

determines are in the furtherance of justice”). Relator offers no factual allegation that there is any wrongdoing.

mandamus a relator must allege and prove a clear right to the performance of **definite, specific and absolute** legal duties imposed upon and violated by the respondent.”)

Relator’s reliance on general duties and conclusory allegations does not establish the elements of mandamus.

5. Relator’s pattern of filings is an abuse of the judicial system and Relator should be deemed a vexatious litigator.

A quick search on this Court’s docket reveals that since December 13, 2022, Relator has filed more than 60 lawsuits with this Court. Relator’s relentless litigation of apparently frivolous claims warrant review, and they will not cease until he is declared a vexatious litigator by this Court pursuant to S.Ct. Prac. R. 4.03(B). Ohio Supreme Court Rule of Practice 4.03 governs frivolous actions and states:

(A) Supreme Court Sanction. If the Supreme Court, sua sponte or on motion by a party, determines that an appeal or other action is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose appropriate sanctions on the person who signed the appeal or action, a represented party, or both. The sanctions may include an award to the opposing party of reasonable expenses, reasonable attorney fees, costs or double costs, or any other sanction the Supreme Court considers just. An appeal or other action shall be considered frivolous if it is not reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

(B) Vexatious Litigator. If a party habitually, persistently, and without reasonable cause engages in frivolous conduct under division (A) of this rule, the Supreme Court may, sua sponte or on motion by a party, find the party to be a vexatious litigator. If the Supreme Court determines that a party is a vexatious litigator under division (A) of this rule, the court may impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the Supreme Court without first obtaining leave, prohibiting the filing of actions in the Supreme Court without the filing fee or security for costs required by S.Ct.Prac.R. 3.04 and 3.05, or any other restriction the Supreme Court considers just.

S.Ct. Prac. R. 4.03.

Relator's Complaint is "not reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law," because this complaint and ones like it do not meet even the basic requirements to advance any claim against Respondents. S.Ct.Prac.R. 4.03(A). Even setting aside for argument's sake the sheriff's department is not sui juris and his complaint is unverified, well established Ohio law rejects Relator's complaint because it cannot meet any of the essential elements of the claim necessary to establish extraordinary relief in mandamus. There is no doubt this action is frivolous, and it appears Relator has a penchant for filing meritless claims, which is precisely the type of behavior S.Ct.Prac.R. 4.03 seeks to prevent.

III. CONCLUSION

This Court must dismiss Relator's Complaint for Writ of Mandamus.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

/s/Frank H. Scialdone

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Counsel for Respondent Crawford County Sheriff's
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CERTIFICATE OF SERVICE

A copy of the foregoing Respondent Crawford County Sheriff's Office's Motion to Dismiss Relator's Complaint for Writ of Mandamus has been electronically filed and served by regular U.S. mail, postage prepaid, on January 11, 2023:

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Pro Se Relator

/s/Frank H. Scialdone

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