

In the Supreme Court of Ohio

STATE EX REL. CHARLES TINGLER,	:	
	:	CASE NO. 2022-1624
Relator,	:	
	:	ORIGINAL ACTION IN
v.	:	MANDAMUS
	:	
FRANKLIN COUNTY PROSECUTOR'S	:	
OFFICE	:	
	:	
OHIO STATE HIGHWAY PATROL,	:	
	:	
Respondent.	:	

MOTION TO DISMISS

CHARLES TINGLER
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Relator, pro se

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MOTION TO DISMISS

Respondent Ohio State Highway Patrol respectfully moves, pursuant to S.Ct.Prac.R. 12.04(A)(1) and Civ.R. 12(B)(6), this Court to dismiss Relator's Petition for Mandamus. The Petition fails to state a claim for which this Court may grant relief as the Ohio State Highway Patrol has discretion on whether to enforce the criminal laws on all state properties and state institutions. Accordingly, a writ of mandamus is not appropriate. A memorandum in support is attached.

Respectfully submitted,
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Ohio Attorney General

/s/ Tammy V. Chavez

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MEMORANDUM

I. Background

On December 26, 2022, the Ohio State Highway Patrol (Highway Patrol), received a complaint from Relator Charles Tingler. Petition, Caption and Exhibit 1. Tingler attempted to file a police report against the Ohio Organized Crime Investigations Commission of the Ohio Attorney General's Office (Commission). *Id.* Tingler alleged that the Commission unlawfully released documents that are statutorily required to remain confidential. *Id.* On December 27, 2022, Tingler filed the present Petition for Writ of Mandamus. In his Petition, Tingler requests an order from this Court directing the Highway Patrol to file a police report, conduct a criminal investigation, and charge the Commission members "with a criminal complaint in accordance with Ohio Criminal Rule 3." Petition, ¶ 5.

II. Failure to State a Claim for Relief

A. Standard of Review

In considering a motion to dismiss for failure to state a claim under Civ.R. 12(B)(6), the Court must construe all material allegations in the complaint and all inferences that may be reasonably drawn in favor of the nonmoving party. *Fahnbulleh v. Strahan*, 73 Ohio St.3d 666, 667, 652 N.E.2d 1186 (1995). In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, "it must appear beyond doubt from the complaint that plaintiff can prove no set of facts warranting relief." *State ex rel. Jennings v. Nurre*, 72 Ohio St.3d 596, 597, 651 N.E.2d 1006 (1995).

It is well established that mandamus is an extraordinary remedy. *State ex. rel. Gerspacher v. Coffinberry*, 157 Ohio St. 32, 36, 104 N.E.2d 1 (1952). In order for this Court to issue a writ of mandamus, a relator must ordinarily show (1) a clear legal right to the relief sought, (2) a clear

legal duty on the part of the respondent to provide such relief, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Pressley v. Indus. Comm’n*, 11 Ohio St. 2d 141, 228 N.E.2d 631 (1967). “Absent an abuse of discretion, mandamus cannot compel a public body or official to act in a certain way on a discretionary matter.” *Id.*; *State ex rel. Veterans Serv. Office v. Pickaway Cty. Bd. of Commrs.*, 61 Ohio St. 3d 461, 463, 575 N.E.2d 206, 207 (1991). Abuse of discretion implies an attitude that is unreasonable, arbitrary or unconscionable. *State ex rel. Bitter v. Missig*, 72 Ohio St. 3d 249, 253, 648 N.E.2d 1355, 1358 (1995).

B. Tingle does not have a clear legal right to the relief sought and the Highway Patrol does not have a legal duty to provide the requested relief.

Ohio Revised Code Section 5503.02 prescribes the duties and powers of the Highway Patrol. Pursuant to R.C. 5503.02(A), “[t]he superintendent or any state highway patrol trooper *may* enforce the criminal laws on all state properties and state institutions, owned or leased by the state. . . .” (Emphasis added.) By its very terms, R.C. 5503.02(A) vests in the State Highway Patrol discretion to enforce the criminal laws on all state properties and state institutions. It is well-settled that mandamus cannot be used to control the exercise of administrative or legislative discretion. *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 248-249, 1997 Ohio 274, 673 N.E.2d 1281 (1997). And therefore, mandamus cannot be used to force the Highway Patrol to investigate when that authority is discretionary.

Tingle seeks, in part, an order directing the Highway Patrol to file a police report, conduct a criminal investigation, and charge the Commission members “with a criminal complaint in accordance with Ohio Criminal Rule 3.” Petition, ¶ 5. Under R.C. 5503.02, Tingle does not have a legal right to the relief requested, namely directing the Highway Patrol to investigate allegations against the Commission. Similarly, the Highway Patrol does not have a legal duty to conduct such an investigation. Instead, the language in R.C. 5503.02 gives the Highway Patrol discretion

whether to investigate allegations received. Accordingly, the Highway Patrol does not have a duty to provide the relief Tingler requests and Tingler has no right to that relief.

In addition, pursuant to Civ.R. 8(A), a complaint must contain (1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled. Tingler failed to allege any specific acts on the part of the Highway Patrol that would give rise to the relief requested. At most, Tingler argues that the Highway Patrol did not investigate Tingler's allegations, a decision that is discretionary, not mandatory under R.C. 5503.02. Thus, dismissal of this action is appropriate.

C. An adequate remedy at law exists under R.C. 2935.09.

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.” Tingler may, under R.C. 2935.09, file an affidavit including such allegations with a reviewing official. Since R.C. 2935.09 provides Tingler an adequate remedy at law, dismissal of this action is appropriate.

D. The Highway Patrol did not abuse its discretion.

Abuse of discretion implies an attitude that is unreasonable, arbitrary or unconscionable. *State ex rel. Bitter v. Missig*, 72 Ohio St. 3d 249, 253, 648 N.E.2d 1355, 1358 (1995). Pursuant to R.C. 5503.02(A), the Highway Patrol has discretion in enforcing criminal laws on all state properties and state institutions. Tingler does not provide statements to support an abuse of

discretion finding. Tingler's mere conclusory statement that, in the exercise of its discretion, the Highway Patrol abused its discretion when it failed to investigate, is insufficient. It is not an abuse of discretion when the Highway Patrol acted within its discretion and decided not to conduct an investigation based on the Tingler's complaint.

III. Conclusion

For the reasons set forth above, the Highway Patrol moves the Court to dismiss Tingler's claims.

Respectfully submitted,
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/s/ Tammy V. Chavez

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2023, a copy of the foregoing was served via regular U.S. Mail upon the following:

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/s/ Tammy V. Chavez
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