

IN THE SUPREME COURT OF OHIO

APRIL CLARK,

Relator,

v.

DAVE YOST, ET AL.,

Respondent.

Case No. 2024-1681

**Original Action in Mandamus  
Regular Schedule**

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**MOTION TO DISMISS OF RESPONDENT GARY TYACK**

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Now comes Respondent Franklin County Prosecutor Gary Tyack, by and through counsel, and respectfully moves this Court to dismiss the Petition in Mandamus pursuant to Civ.R. 12(B)(6), and S.Ct.Prac.R. 12.04(A)(1). Relator has failed to state a claim upon which relief may be granted. As such, Relator is not entitled to the extraordinary relief requested.

For the reasons set forth in the attached Memorandum in Support, Respondent respectfully requests the Court dismiss Relator's Petition.

Respectfully submitted,

**G. Gary Tyack 017524  
PROSECUTING ATTORNEY  
FRANKLIN COUNTY, OHIO**

/s/ Nickole K. Iula

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## **Memorandum in Support**

### **I. Facts**

On December 5, 2024, Relator, pro se, filed a petition in mandamus with this Court. The Petition asks this Court to issue a writ of mandamus which would compel Respondent to conduct a criminal investigation into “Brian Spitz, Trisha Breedlove, Greg Shumaker, Chris Brown, et.al, and each and every person conspiring, colluding and aiding and abetting criminal activities of coverup and concealment of...crimes, as outlined in the detailed factual allegations submitted by [Relator] in Appeal and Writs in this Court.”<sup>1</sup> Petition at 21.<sup>2</sup> The Petition identifies a list of nine actions filed in this Court, which consist of eight original actions and one jurisdictional appeal. *Id.* at 22. The Court previously disposed all of these cases.<sup>3</sup>

Relator alleges that, by initiating these matters, she placed Respondent on notice of criminal activity. *Id.* at 22–24. Respondent failed to both investigate Relator’s claims and criminally prosecute the individuals identified in each of the matters outlined in the Petition. *Id.* at 23–24. Respondent, as the Franklin County Prosecutor, was legally obligated to conduct both the investigation and criminal prosecution. *Id.* Since Respondent is derelict in performing their duty, Relator is entitled to receive the requested writ of mandamus.

On December 20, 2024, this Court found that Relator was a vexatious litigator pursuant to S.Ct.Prac.R. 4.03(B). *Clark v. Nagel, et al.*, Case No. 2024-1362, 2024-Ohio-5922 (Nov. 27,

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<sup>1</sup> Unless otherwise indicated, Respondent has reproduced all spelling and grammatical errors as they originally appeared in the Petition.

<sup>2</sup> The Petition does not include page numbers. When citing the Petition, Respondent will use the page number as reflected on the Court’s electronic docket.

<sup>3</sup> While generally a Civ.R. 12(B)(6) determination cannot rely on factual allegations or evidence outside the petition, Courts may take judicial notice of appropriate matters in determining a Civ.R. 12(B)(6) motion without converting it to a motion for summary judgment. *State ex rel. Scott v. Cleveland*, 2006-Ohio-6573, ¶ 26. This includes court records that are available on the internet as public records. *State ex rel. Everhart v. McIntosh*, 2007-Ohio-4798, ¶ 8, 10.

2024). Relator is prohibited from continuing or instituting legal proceedings without first obtaining leave of this Court. *Id.*

Based on these facts, Relator has failed to demonstrate she is entitled to receive the requested writ.

## **II. Law and Argument**

### **A. Relator fails to comply with R.C. 2731.04.**

Under R.C. 2731.04, an “[a]pplication for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying.” Failure to properly file the petition in the name of the state is fatal to a writ of mandamus action. *Litigaide, Inc. v. Custodian of Records for Lakewood Police Dept.*, 75 Ohio St.3d 508, 508 (1996). Relator’s Petition does not comply with R.C. 2731.04. Relator failed to properly caption the case or otherwise raise any claim in the name of the State of Ohio. Instead, the instant matter bears the caption “April Clark...Plaintiff.” Since Relator’s Petition has not been made in the name of the state, it fails to comply with R.C. 2731.04 and, therefore, warrants dismissal.

### **B. Relator fails to state a claim in mandamus.**

A motion to dismiss under Civ.R. 12(B)(6) is procedural and tests the sufficiency of the petition. *State ex rel. Dodson v. Ohio Dept. of Rehab. & Corr.*, 2023-Ohio-2263, ¶ 13. When 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 petition and all inferences that may be reasonably drawn in favor of the nonmoving party. *Id.* In order for a court to dismiss a petition under Civ.R. 12(B)(6), it must appear “beyond doubt that [the] relator can prove no set of facts warranting relief.” (Bracketed text in original.) *Id.*, quoting *Clark v. Connor*, 82 Ohio St.3d 309, 311 (1998).

A writ of mandamus is issued by a court to an individual which would “command[] the performance of an act which the law specifically enjoins as a duty resulting from an office” held by the individual. R.C. 2731.01. For a writ of mandamus to issue, Relator must establish: (1) Relator has a clear legal right to the requested relief; (2) Respondent is under a clear legal duty to perform the requested act; and (3) Relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Van Gundy v. Indus. Comm.*, 2006-Ohio-5854, ¶ 13. Relator must demonstrate the existence of “‘all three’ of the requirements for a writ of mandamus...for a writ to issue, the failure to demonstrate one of them is sufficient to deny the writ.” *State ex rel. Wolfenbarger v. Mohr*, 2019-Ohio-3739, ¶ 18 (10th Dist.). A writ of mandamus should only be “issued with great caution and discretion.” *State ex rel. Manley v. Walsh*, 2014-Ohio-4563, ¶ 18. In seeking a writ of mandamus, Relator must prove that she is entitled to the writ by clear and convincing evidence. *State ex rel. Ward v. Reed*, 2014-Ohio-4512, ¶ 10.

Relator asks this Court to issue a writ of mandamus “compelling the Respondents to act, investigate, perform their duties, and issue arrest warrants for Brian Spitz, Trisha Breedlove, Greg Shumaker, Chris Brown, and all others involved in aiding and abetting the alleged criminal activities.” Petition at 27. She also asks this Court to “Order Respondents to conduct an investigation into the criminal activities as outlined in Relator’s complaints and writs filed with the Ohio Supreme Court.” *Id.* Relator’s Petition fails to present any argument or authority demonstrating that Relator is entitled to receive this requested relief. This omission means that Relator failed to identify or demonstrate that she has a clear legal right to the requested relief.

Additionally, Relator has failed to identify a clear legal duty on the part of Respondent to provide the requested relief. To show that a clear legal duty exists, Relator must demonstrate that Respondent had an “absolute obligation” to perform the requested act. *State ex rel. Gallinger v.*

*Smith*, 71 Ohio St. 13, 38 (1904). Relator argues that Respondent has “a clear legal duty to investigate and prosecute criminal activities.” *Id.* at 24. This is incorrect. Respondent, as the Franklin County Prosecutor, does not have a duty to investigate the allegations raised by Relator. A county prosecuting attorney “may inquire into the commission of crimes within the county.” R.C. 309.08(A). In using the word “may,” the General Assembly created a permissive statute, which does not create an absolute obligation. *State ex rel. City of Niles v. Bernard*, 53 Ohio St.2d 31, 34 (1978). Ohio Courts reinforced this concept, finding that a prosecutor has “wide discretion in deciding whether to prosecute a particular matter.” *State ex rel. Capron v. Dattilio*, 2016-Ohio-1504, ¶ 4. Ordinarily, a writ of mandamus cannot be used to compel an official to perform a discretionary act. *State ex rel. City of Niles* at 34–35.

As Respondent Yost noted in his motion to dismiss filed on December 20, 2024, the General Assembly provides a procedure that a private citizen may follow to bring criminal charges against an individual. R.C. 2935.09(D) authorizes a private citizen to seek the arrest or prosecution of another individual and provides the procedure they must follow. According to the language of this statute, a private citizen with knowledge of an individual’s criminal acts “may file an affidavit charging the offense committed with the reviewing official.” *Id.* A reviewing official is “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.” R.C. 2935.09(A). Respondent, as the Franklin County Prosecutor, is a reviewing official under this statute. However, the Relator’s Petition alleges that Respondent was placed on notice via “the detailed factual allegations submitted by [Relator] in Appeal and Writs in this Court.” Petition at 21. Relator does not allege that she filed an affidavit pursuant to R.C. 2935.09(D). Relator cannot rely on this statute to demonstrate she is entitled to receive a writ of mandamus. *State ex rel. Evans v. Tieman*, 2019-

Ohio-2411, ¶ 13. Accordingly, Relator failed to identify a clear legal right and clear legal duty on the part of Respondent to provide the requested relief and the writ of mandamus cannot lie.

There is one exception to this rule. A writ of mandamus will issue to compel a prosecuting attorney to prosecute the offenses committed by a private citizen “[o]nly when the failure to prosecute constitutes an abuse of discretion.” *Capron* at ¶ 4. Relator argues that Respondent’s failure to investigate and issue an arrest warrant “constitutes a clear violation of [her] legal responsibilities and duties to uphold the law” but this claim is not supported by any evidence or authority. Petition at 24. Therefore, Relator has failed to establish that Respondent’s failure to prosecute was an abuse of discretion.

Finally, Relator failed to demonstrate that she does not have access to a plain and adequate remedy at law. Relator claims that she does not have access to an adequate remedy “as the failure of the Respondent[] to act constitutes a denial of the [Relator’s] right to seek justice and protection from criminal conduct.” Petition at 25. This is incorrect as Relator has access to an adequate remedy outlined in R.C. 2935.09(D).

### **III. Conclusion**

Relator has failed to provide this Court with any evidence or authority demonstrating that Relator has a clear legal right to the requested relief. Similarly, Relator has failed to show that Respondent has a clear legal duty to perform the requested act. Finally, Relator has access to an adequate remedy at law. Relator cannot establish the elements for a writ of mandamus. Respondent respectfully requests this Court grant Respondent’s motion and dismiss Relator’s action pursuant to Civ.R. 12(B)(6) and S.Ct.Prac.R. 12.04(A)(1).

Respectfully submitted,

**G. Gary Tyack 017524  
PROSECUTING ATTORNEY**

**FRANKLIN COUNTY, OHIO**

*/s/ Nickole K. Iula*

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**CERTIFICATE OF SERVICE**

This is to certify that on January 3, 2025 a copy of the foregoing was sent via electronic mail to the following parties:

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*Counsel for Respondent Ohio Attorney General Dave Yost.*

This is to certify that on January 3, 2025 a copy of the foregoing was sent via U.S. mail, postage prepaid to the following:

Zach Klein  
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*Respondent.*

*/s/ Nickole K. Iula*

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