

THE STATE EX REL. WHITE, APPELLANT, v. GOLDSBERRY, JUDGE, ET AL.,

APPELLEES.

[Cite as *State ex rel. White v. Goldsberry* (1999), \_\_\_ Ohio St.3d \_\_\_\_.]

*Public records — Mandamus to compel common pleas court judge and prosecuting attorney to provide relator with records of peremptory strikes resulting in the exclusion of African-Americans as foremen of grand juries from 1960 to 1999 — Complaint dismissed, when.*

(No. 98-2285 — Submitted February 9, 1999 — Decided March 31, 1999.)

APPEAL from the Court of Appeals for Athens County, No. 98CA000038.

In 1984, appellant, Michael T. White, was convicted of one count of aggravated burglary, two counts of aggravated robbery, one count of felonious assault, and accompanying firearm specifications, and was sentenced to prison. See *State v. White* (May 23, 1986), Athens App. No. 1230, unreported, 1986 WL 6048.

In September 1998, White filed a complaint in the Court of Appeals for Athens County for a writ of mandamus to compel appellees, Athens County Common Pleas Court Judge L. Alan Goldsberry and Athens County Prosecuting Attorney William R. Biddlestone, to, *inter alia*, provide him with records of peremptory strikes resulting in the exclusion of African-Americans as foremen of grand juries from 1960 to 1999; to provide him with records containing information indicating whether an African-American had ever been selected foreman of a grand jury in Athens County; to quash White's indictment; to declare a violation of Section 243, Title 18, U.S.Code; and to discharge White if no African-American had ever been selected to be the foreman of an Athens County Grand Jury. White did not file an R.C. 2969.25(A) affidavit describing each civil

action or appeal of a civil action he had filed in the previous five years in any state or federal court.

The court of appeals *sua sponte* dismissed the complaint.

This cause is now before the court upon an appeal as of right.

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*Michael T. White, pro se.*

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***Per Curiam.*** White asserts in his sole proposition of law that the court of appeals erred in dismissing his mandamus action. For the reasons that follow, however, White's contentions lack merit.

First, the records sought by White do not exist, and appellees have no duty under R.C. 149.43 to create new records by searching for and compiling information from existing records. *State ex rel. Kerner v. State Teachers Retirement Bd.* (1998), 82 Ohio St.3d 273, 274, 695 N.E.2d 256, 258; *State ex rel. Lanham v. Ohio Adult Parole Auth.* (1997), 80 Ohio St.3d 425, 427, 687 N.E.2d 283, 285.

Second, appellees had no duty under R.C. 149.43 to transmit copies of the requested records to White in prison. *State ex rel. Iacovone v. Kaminski* (1998), 81 Ohio St.3d 189, 190, 690 N.E.2d 4, 5; *State ex rel. Mayes v. Holman* (1996), 76 Ohio St.3d 147, 149, 666 N.E.2d 1132, 1134.

Third, White had an adequate legal remedy to raise issues relating to the fairness of the grand jury selection process by motion to dismiss the indictment and direct appeal of his criminal conviction. R.C. 2731.05.

Fourth, to the extent that White requested his discharge from prison, habeas corpus, rather than mandamus, is the proper action. *State ex rel. Sampson v. Parrott* (1998), 82 Ohio St.3d 92, 93, 694 N.E.2d 463.

Finally, the court of appeals held that White failed to comply with the requirements of R.C. 2969.25(A) in commencing his mandamus action, and like the appellants in similar cases, White does not assert on appeal that R.C. 2969.25(A) is inapplicable to mandamus actions. See *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421, 422, 696 N.E.2d 594, 594-595, and *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285, 286, 685 N.E.2d 1242, 1242-1243; cf. *Smith v. Walker* (1998), 83 Ohio St.3d 431, 432-433, 700 N.E.2d 592, 593.<sup>1</sup>

Based on the foregoing, we affirm the judgment of the court of appeals.

*Judgment affirmed.*

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

**FOOTNOTE:**

1. We overrule White's motion for default judgment. Although appellees failed to file a timely merit brief, we decline to reverse the judgment of the court of appeals because White's brief does not "reasonably appear[] to sustain reversal." S.Ct.Prac.R. VI(6).