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SLIP OPINION NO. 2026-OHIO-3907

THE STATE EX REL. HILL, APPELLANT, v. FORCHIONE, JUDGE, APPELLEE.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Hill v. Forchione*, Slip Opinion No. 2026-Ohio-3907.]

Prohibition—Mandamus—Court of appeals did not err in dismissing writ action at issue in case No. 2025-1686 for inmate’s failures to include an affidavit listing his prior civil actions under R.C. 2969.25(A) and to include an affidavit of indigence under R.C. 2969.25(C)—Court of appeals did err in dismissing writ action at issue in case No. 2025-1687 based on inmate’s purported noncompliance with R.C. 2969.25(A), because inmate executed his R.C. 2969.25(A) affidavit before filing action in court of appeals—Judgment affirmed in case No. 2025-1686 and judgment reversed and cause remanded in case No. 2025-1687.

(Nos. 2025-1686 and 2025-1687—Submitted June 30, 2026—Decided October 7, 2026.)

APPEALS from the Court of Appeals for Stark County, Nos. 2025CA00154 and

2025CA00160.

The below per curiam opinion announcing the judgment of the court was joined by FISCHER, HAWKINS, and SHANAHAN, JJ. KENNEDY, C.J., concurred in judgment only. DEWINE, J., concurred in part and dissented in part, with an opinion joined by BRUNNER and DETERS, JJ.

Per Curiam Opinion announcing the judgment of the court.

{¶ 1} Appellant, Frederick M. Hill, appeals the Fifth District Court of Appeals’ dismissals of two cases in which he sought writs of prohibition or mandamus against appellee, Stark County Court of Common Pleas Judge Frank G. Forchione. In each case, Hill also filed a motion to consolidate the appeals.

{¶ 2} We grant the motions to consolidate. We affirm the judgment in case No. 2025-1686, but we reverse the judgment in case No. 2025-1687 and remand that case for further proceedings because the Fifth District misapplied R.C. 2969.25(A).

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Case No. 2025-1686

{¶ 3} Hill is incarcerated at the Richland Correctional Institution. On November 10, 2025, Hill filed in the Fifth District a document titled “motion for in camera inspection of affidavits and warrants under seal.” In the motion, Hill contended that he had unsuccessfully sought to examine affidavits and warrants that had been filed under seal in *State v. Hill*, Stark C.P. No. 2017CR0700, in which Hill was charged on multiple felony counts. Hill asked in the motion that the Fifth District order Judge Forchione to submit an unredacted affidavit and warrant for the Fifth District’s in camera review. The motion was not appended to any other pleading.

{¶ 4} The Fifth District filed Hill’s motion under case No. 2025CA00154 and sua sponte dismissed the case two weeks later. Treating the motion as a request for relief in mandamus and prohibition, the court dismissed the action because application for relief in mandamus must be by petition, not by motion. *See* R.C. 2731.04. The court also noted that Hill had not complied with the R.C. 2969.25 affidavit requirements, which apply to incarcerated inmates, in that he had failed to file either an R.C. 2969.25(A) affidavit describing the civil actions he filed within the previous five years or an R.C. 2959.25(C) affidavit of indigence.

B. Case No. 2025-1687

{¶ 5} On November 14, 2025, Hill filed a petition for a writ of mandamus or prohibition, which the Fifth District docketed under case No. 2025CA00160. Hill alleged that Judge Forchione had improperly ordered an affidavit and warrant to be sealed in *State v. Hill*, Stark C.P. No. 2017CR0700. Hill requested a writ of mandamus or prohibition directing Judge Forchione to make the sealed records available for copying or delivery to Hill and to vacate all sealing orders. Alternatively, Hill asked for an order directing Judge Forchione to submit the records for the Fifth District’s in camera inspection to determine whether they should be provided to Hill or remain sealed.

{¶ 6} Along with his writ petition, Hill filed a separate motion to unseal “affidavits and warrants under seal.” This motion is substantially similar to the one filed in the Fifth District under case No. 2025CA00154. In addition, Hill filed an affidavit of indigency under R.C. 2969.25(C). Hill’s petition also included a list of civil actions or civil appeals he filed in the previous five years, as required by R.C. 2969.25(A).

{¶ 7} The Fifth District sua sponte dismissed Hill’s petition. The court took judicial notice of its own docket and found that Hill’s R.C. 2969.25(A) affidavit of prior civil actions was defective because it failed to list case No. 2025CA00154,

filed on November 10, 2025. Because it dismissed the case, the court denied Hill's motion to unseal as moot.

C. Motions to Consolidate

{¶ 8} Hill appealed both dismissals to this court as of right. He also filed in each case an unopposed motion to consolidate the appeals.

{¶ 9} We grant the motions to consolidate. The two cases share common factual and legal issues, and the reasons for the Fifth District's dismissal of the case on appeal in Supreme Court case No. 2025-1687 relate to Hill's filing that is at issue in Supreme Court case No. 2025-1686.

II. ANALYSIS

{¶ 10} We review de novo a court of appeals' dismissal of a complaint in an extraordinary-writ action, *State ex rel. Harris v. Trelka*, 2025-Ohio-4453, ¶ 4, including dismissal for noncompliance with R.C. 2926.25(A), *McIntyre v. May*, 2026-Ohio-1231, ¶ 5.

{¶ 11} Hill maintains that on November 6, 2025, he sent three documents to the Fifth District by certified mail in a single envelope: (1) his petition for a writ of prohibition or mandamus, (2) his R.C. 2969.25 affidavit, and (3) a motion for in camera inspection of affidavits and warrants under seal. Therefore, Hill argues, the Fifth District clerk of courts should not have filed solely the motion for in camera inspection as a separate action in case No. 2025CA00154, because it was sent to the court together with the writ petition in case No. 2025CA00160. And, alleging that he did not intend to commence separate civil actions, Hill contends that the Fifth District erred in treating them as such and dismissing both of them.

{¶ 12} On appeal, Hill has submitted evidence purporting to show that he sent the Fifth District only one certified mailing that included all three documents in one envelope. However, we cannot consider Hill's evidence. An appellate court cannot add material to the record that was not before the lower court and then decide the appeal based on that new material. *State ex rel. Huber Hts. Veterans Club, Inc.*

v. Skelton, 2023-Ohio-485, ¶ 3. Regardless, Hill’s evidence does not definitively establish that he sent just one envelope containing three documents to be filed in the Fifth District.

{¶ 13} On the record before us, we conclude that the Fifth District did not err in dismissing the action at issue in Supreme Court case No. 2025-1686. The record shows that the Fifth District received from Hill on November 10, 2025, a motion for in camera inspection of warrants and affidavits filed under seal. The filing was not attached to another pleading and was not filed under an existing case number. The court appears to have liberally construed the filing as a complaint requesting relief in mandamus and prohibition. *See State ex rel. Neil v. French*, 2018-Ohio-2692, ¶ 11 (collecting cases standing for the proposition that courts of appeals may liberally construe pro se filings). Having construed the filing as such, the Fifth District properly dismissed the case for failure to comply with R.C. 2969.25. Any leniency afforded to pro se litigants in construing the substance of their filings does not extend to compliance with R.C. 2969.25(C). *Neil* at ¶ 11.

{¶ 14} The Fifth District erred, however, in dismissing the action at issue in Supreme Court case No. 2025-1687 based on Hill’s purported noncompliance with R.C. 2969.25(A). R.C. 2969.25(A) requires an inmate, at the time he commences a civil action or appeal against a government entity or employee, to file with the court an affidavit “that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.” The affidavit of prior civil actions required by R.C. 2969.25(A) must include “only cases that have already been filed *at the time the affidavit is executed*.” (Emphasis added.) *State ex rel. Mason v. Supervisor of Edn., Warren Corr. Inst.*, 2025-Ohio-4803, ¶ 8.

{¶ 15} Taking judicial notice of its own docket, the Fifth District found Hill’s R.C. 2969.25(A) affidavit of prior civil actions deficient because it did not list Fifth District case No. 2025CA00154—i.e., the matter before us on appeal in

Supreme Court case No. 2025-1686. The record in Supreme Court case No. 2025-1687, however, shows that Hill executed his R.C. 2969.25(A) affidavit on October 30, 2025, which was 11 days *before* case No. 2025CA00154 was filed in the Fifth District. Hill was not required to disclose an action that was not yet filed at the time he executed the affidavit. Thus, the Fifth District erred in finding Hill’s R.C. 2969.25(A) affidavit deficient for failing to disclose case No. 2025CA00154.

{¶ 16} We therefore reverse the court of appeals’ judgment in Supreme Court case No. 2025-1687 on the basis that it erred in finding Hill’s R.C. 2969.25(A) affidavit deficient. Because we reach that conclusion, we need not reach Hill’s other arguments for reversal.

III. CONCLUSION

{¶ 17} We grant Hill’s motion to consolidate these appeals for purposes of decision, and we affirm the judgment of the Fifth District Court of Appeals in Supreme Court case No. 2025-1686. In Supreme Court case No. 2025-1687, however, we reverse the judgment of the Fifth District and remand that case to that court for further proceedings on Hill’s writ petition.

Judgment affirmed in case No. 2025-1686;
judgment reversed and cause remanded in case No. 2025-1687.

DEWINE, J., joined by BRUNNER and DETERS, JJ., concurring in part and dissenting in part.

{¶ 18} An Ohio statute requires: “*At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.*” (Emphasis added.) R.C. 2969.25(A). Here, Frederick M. Hill, a prison inmate, commenced two original actions in the Fifth District Court of Appeals: one on November 10, 2025, and one on November 14, 2025.

{¶ 19} Hill filed an affidavit with his November 14 original action, but the affidavit did not list his November 10 civil action. So, applying the plain language of R.C. 2969.25(A), the Fifth District dismissed the November 14 case. Hill had not satisfied R.C. 2929.25(A) because “[a]t the time that [he] commence[d]” the November 14 case, he failed to file an affidavit that described every civil action or appeal that he had “filed in the previous five years in any state or federal court.”

{¶ 20} Surprisingly, the majority reverses the Fifth District’s decision dismissing the November 14 case. In its view, R.C. 2929.25(A) does not mean what it says. According to the lead opinion, R.C. 2929.25(A) does not require that “at the time that an inmate commences a civil action,” the inmate actually file an affidavit that lists all lawsuits filed in the previous five years. Instead, in its reading, the statute requires only that an inmate file an affidavit that lists five years of lawsuits prior to the date the affidavit is signed, regardless of when the affidavit is filed. That’s not what the statute says. So I dissent from that portion of the lead opinion and the court’s judgment. I concur in the remainder.

I. BACKGROUND

{¶ 21} This consolidated case involves two separate filings by Hill in the Fifth District Court of Appeals. On November 10, 2025, Hill filed a document titled “motion for in camera inspection of affidavits and warrants under seal.” The Fifth District docketed the motion as case No. 2025CA00154.

{¶ 22} Then, on November 14, the Fifth District received another filing from Hill, this time a petition for a writ of mandamus or prohibition. Along with the petition, Hill filed an affidavit purportedly listing the civil actions or appeals Hill had filed in the last five years as required by R.C. 2969.25(A). The Fifth District docketed these two filings as case No. 2025CA00160.

{¶ 23} The Fifth District sua sponte dismissed both cases. It treated the November 10 case as a request for relief in mandamus and prohibition, and dismissed the case for Hill’s failure to include an affidavit listing his prior civil

actions under R.C. 2969.25(A) and for his failure to include an affidavit of indigence under R.C. 2969.25(C). The Fifth District likewise dismissed Hill's November 14 case, concluding that his R.C. 2969.25(A) affidavit was defective because it failed to list his November 10 case as a prior civil action he had filed.

{¶ 24} Hill appealed the dismissal of both cases to this court. The majority affirms the Fifth District's dismissal of Hill's November 10 action (Supreme Court case No. 2025-1686) for his failure to satisfy the requirements of R.C. 2969.25. I concur in the portions of the lead opinion and the court's judgment doing so. The majority, however, reverses the Fifth District's dismissal of Hill's November 14 action (Supreme Court case No. 2025-1687). I dissent from that portion of the lead opinion and the court's judgment.

II. The Majority Errs in its Resolution of Hill's November 14 Case

{¶ 25} Hill's November 14 case is resolved by a straightforward application of statutory text. R.C. 2969.25(A) states: "*At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.*" (Emphasis added.) R.C. 2969.25(A). Noncompliance with this statutory requirement requires dismissal of the inmate's action. *McIntyre v. May*, 2026-Ohio-1231, ¶ 5, citing *Robinson v. Fender*, 2020-Ohio-458, ¶ 6.

A. Hill's Affidavit Did Not Describe All His Prior Civil Actions

{¶ 26} The issue in this case is whether Hill's affidavit for his November 14 filing described "each civil action" he had "filed in the previous five years" when he "commence[d]" the November 14 action, R.C. 2969.25(A). "A civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant." Civ.R. 3(A). This definition of "commenced" applies to all civil actions, including original actions filed in the courts of appeals. *See generally State ex rel. Sautter v. Grey*, 2008-Ohio-1444, ¶ 11

(“The Rules of Civil Procedure are generally applicable in original actions for extraordinary writs.”).

{¶ 27} As long as service is obtained within one year, the date of commencement is the date that a complaint is filed with the court. *See Moore v. Mt. Carmel Health Sys.*, 2020-Ohio-4113, ¶ 16. Here, Hill successfully obtained service in both cases within one year of filing. So, Hill’s cases were commenced on November 10 and November 14—the dates of the “filing [of the] complaint[s] with the court,” Civ.R. 3(A). When Hill “commence[d]” his November 14 civil action, his November 10 case was a “civil action” that he had “filed in the previous five years in any state or federal court,” R.C. 2969.25(A). And because the affidavit filed with his writ petition did not describe the November 10 case, Hill failed to comply with the statute’s mandatory requirements—which required dismissal of his action. *See McIntyre*, 2026-Ohio-1231, at ¶ 5.

B. The Lead Opinion Disregards the Statutory Text

{¶ 28} Despite R.C. 2969.25(A)’s plain language, the lead opinion concludes that “[t]he affidavit of prior civil actions required by R.C. 2969.25(A) must include ‘only cases that have already been filed *at the time the affidavit is executed.*’” (Emphasis in original.) Lead opinion, ¶ 14, quoting *State ex rel. Mason v. Supervisor of Edn., Warren Corr. Inst.*, 2025-Ohio-4803, ¶ 8.

{¶ 29} But, of course, such a reading is incompatible with the statutory text. Go back to what the statute says: “At the time that an inmate commences a civil action . . . against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action . . . that the inmate has filed in the previous five years.” R.C. 2969.25(A). As a matter of sentence structure, the introductory clause—“[a]t the time that an inmate commences a civil action”—provides a temporal anchor for the rest of the sentence. It establishes both when the prisoner must file the affidavit (at commencement) and what must be in the affidavit (descriptions of all civil actions filed in the five years previous to

commencement). Nothing in the statutory text mentions the date of execution or the date of signing of the affidavit; rather, the sole statutory measuring point for the five-year period is the date of commencement.

{¶ 30} Indeed, the lead opinion’s reading buckles under its own weight. By its logic, an inmate could execute in 2026 an affidavit describing five prior years of civil actions, file numerous actions over the next two years, and then initiate a new lawsuit in 2028—relying on the 2026 affidavit—without disclosing any of the intervening civil actions. That can’t be the way the statute works.

{¶ 31} The lead opinion makes no attempt to engage with the text of R.C. 2969.25(A). Instead, the only support the lead opinion offers for its conclusion is a stray line from this court’s decision in *Mason*, 2025-Ohio-4803, at ¶ 8. But *Mason* cannot bear the burden the lead opinion lays on it.

{¶ 32} First, in *Mason*, we provided no analysis—textual or otherwise—to support our statement that R.C. 2969.25(A)’s five-year period is measured from the date of the signing of the affidavit rather than “the time that an inmate commences a civil action,” R.C. 2969.25(A). *See Mason* at ¶ 8.

{¶ 33} Second, the statement relied on by the lead opinion is arguably dicta. In *Mason*, the inmate’s R.C. 2969.25(A) affidavit listed three civil actions he had filed, but his description of the second case did not contain a case number or indicate in which court it had been filed. The inmate argued these deficiencies did not warrant dismissal because he had not yet filed the second case at the time he swore to his affidavit. After stating that the R.C. 2969.25(A) affidavit required only the listing of civil actions filed at the time the affidavit was executed, we held “[t]he evidence in the record . . . d[id] not support his assertion that he had not yet filed the case that he insufficiently described in his original affidavit.” *Mason* at ¶ 8. Thus, *Mason* was ultimately resolved on evidentiary grounds.

{¶ 34} In the end, we have on the one hand the plain statutory text of R.C. 2968.25(A); on the other, *Mason*’s judicial gloss on that text that is plainly

inconsistent with what the statute actually says. “It is our duty to apply the statute as the General Assembly has drafted it.” *Doe v. Marlinton Local School Dist. Bd. of Edn.*, 2009-Ohio-1360, ¶ 29. So rather than double down on the mistake we made in *Mason*, we should correct course and apply to this case the plain text of what the legislature enacted. *See Wallace v. Ohio Dept. of Commerce, Div. of State Fire Marshal*, 2002-Ohio-4210, ¶ 33 (“It is not this court’s role to apply a judicially created doctrine when faced with statutory language that cuts against its applicability.” [Emphasis deleted.]).

{¶ 35} Because “[a]t the time that [Hill] commence[d his November 14] civil action,” R.C. 2969.25(A), he failed to file an affidavit describing every other civil action that he had commenced against the government in the past five years, the Fifth District Court of Appeals did not err in dismissing the November 14 civil action.

III. CONCLUSION

{¶ 36} I concur in the portion of the lead opinion and the court’s judgment that affirms the Fifth District Court of Appeals’ judgment dismissing Hill’s November 10, 2025 action in Supreme Court case No. 2025-1686. I dissent from the portion of the lead opinion and the court’s judgment that reverses the Fifth District’s judgment dismissing Hill’s November 14, 2025 action in Supreme Court case No. 2025-1687.

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