

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DANIEL LAWSON	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Relator	:	Hon. Sheila G. Farmer, J.
-vs-	:	Hon. John W. Wise, J.
	:	
JUDGE TARYN HEATH	:	
	:	CASE NO. 2008CA00053
Respondent	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Petition for Writ of Mandamus

JUDGMENT: WRIT DENIED.

DATE OF JUDGMENT ENTRY: May 27, 2008

APPEARANCES:

For Relator – pro se:

DANIEL LAWSON - #521-507
Richland Correctional Institution
P.O. Box 8107
Mansfield, OH 44901

For Respondent:

JOHN D. FERRERO, JR.
Prosecuting Attorney
By: LISA J. BARR
Assistant Prosecuting Attorney
110 Central Plaza South – Suite 500
Canton, OH 44702

Farmer, J.,

{¶1} Relator has filed a Petition for Writ of Mandamus requesting the trial court be compelled to rule on a “Motion to Withdraw Guilty Plea” filed by Relator on December 21, 2007. Respondent has filed a Motion to Dismiss on the grounds the petition is moot, as well as Relator’s failure to properly caption the petition. On March 26, 2008, Respondent issued a ruling on Relator’s underlying motion to withdraw his guilty plea.

{¶2} A relator is entitled to a writ of mandamus if the following conditions are satisfied: (1) the relator demonstrates a clear legal right to the relief prayed for; (2) the respondent is under a corresponding legal duty to perform the actions that make up the prayer for relief; and, (3) the relator has no plain and adequate remedy in the ordinary course of law. *Doss Petroleum, Inc. v. Columbiana Cty. Bd. of Elections*, 164 Ohio App.3d 255, 2005-Ohio-5633, 842 N.E.2d 66, citing to *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28, 29, 451 N.E.2d 225.

{¶3} Respondent suggests Relator has failed to comply with the procedural requirements for filing a petition for writ of mandamus. We agree. Under R.C. 2731.04: “Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit.” The failure to properly caption the complaint is grounds for dismissal. *Thorne v. State*, 8th Dist., 2004-Ohio-6288; *Maloney v. Court of Common Pleas of Allen County* (1962), 173 Ohio St. 226, 181 N.E.2d 270.

{¶4} Relator herein has not properly captioned his complaint nor has he verified it by affidavit. These reasons alone are sufficient grounds for dismissing a

petition for a writ of mandamus. *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596 817 N.E.2d 382; *Perotti v. Mahoning County Clerk*, 7th Dist. No. 05-MA-202, 2006-Ohio-673.

{¶5} Respondent also suggests the petition is now moot in light of the trial court's ruling on the motion to withdraw guilty plea. We agree. The Supreme Court held in *Madsen*, "Mandamus will not issue to compel an act that has already been performed." *State ex rel. Scruggs v. Sadler*, 102 Ohio St.3d 160, 2004-Ohio-2054, 807 N.E.2d 357, ¶5. *State ex rel. Madsen v. Jones* (2005), 106 Ohio St.3d 178, *179, 833 N.E.2d 291, **292.

{¶6} For these reasons, the petition is dismissed.

{¶7} MOTION TO DISMISS GRANTED.

{¶8} WRIT DENIED.

By: Farmer, J.
Hoffman, P.J. and
Wise, J. concur

HON. SHEILA F. FARMER

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

