

[Cite as *State ex rel. Allen v. Fleegle*, 2011-Ohio-5458.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE EX REL. JOHN DALE ALLEN

Petitioner

v.

MARK C. FLEEGLE, et al.

Respondents

JUDGES:

Hon. John W. Wise, P.J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. CT2011-0045

OPINION

CHARACTER OF PROCEEDING:

Writ of Mandamus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

October 20, 2011

APPEARANCES:

For Petitioner

For Respondents

JOHN DALE ALLEN
c/o 28 North 4th Street
S.B.4
Zanesville, Ohio 43701

JUDGE MARK FLEEGLE
401 Main Street
Zanesville, Ohio 43701

Wise, P. J.

{¶1} Relator, John Dale Allen, has filed a Petition for Writ of Mandamus requesting this Court issue a writ ordering Respondents, Judge Mark C. Fleegle and Judge Jay F. Vinsel, to release Relator from incarceration due to Relator's medical condition.

{¶2} Initially, we find Relator has failed to comply with R.C. 2969.25 by not filing an affidavit detailing his prior civil filings. We will nonetheless address the merits of Relator's Petition.

{¶3} "A writ of mandamus will not be issued where there is a plain and adequate remedy in the ordinary course of the law. R.C. 2731.05. A civil rights action under Section 1983, Title 42, U.S.Code constitutes an adequate legal remedy which precludes extraordinary relief where state prisoners challenge the conditions of their confinement and their claims are limited to alleged violation of their federal constitutional and statutory rights. *State ex rel. Carter v. Schotten* (1994), 70 Ohio St.3d 89, 91-92, 637 N.E.2d 306, 309. Section 1983 constitutes an adequate remedy, since it can provide declaratory, injunctive (both mandatory and prohibitive), and/or monetary relief. 1 Schwartz & Kirklin, Section 1983 Litigation: Claims, Defenses, and Fees (2 Ed.1991) 830, Section 16.1." *State ex rel. Peeples v. Anderson* (1995), 73 Ohio St.3d 559, 560, 653 N.E.2d 371, 373.

{¶4} "*Sua sponte* dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint. *State ex rel. Bruggeman*

v. Ingraham (1999), 87 Ohio St.3d 230, 231, 718 N.E.2d 1285, 1287.” *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 316, 725 N.E.2d 663, 667.

{¶15} Because it is evident from the Complaint that Relator has or had an adequate remedy at law by way of a civil rights action under Section 1983, Title 42, U.S.Code, we will not issue the requested writ of mandamus and dismiss this cause for failure to state a claim upon which relief may be granted.

By: Wise, P. J.

Edwards and Delaney, JJ., concur.

JUDGES

