

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MOISES RAMIREZ	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Petitioner	:	Hon. John W. Wise, J.
	:	Hon. Julie A. Edwards, J.
-vs-	:	
	:	CASE NO. 11CA87
RICHLAND COUNTY COMMON	:	
PLEAS COURT	:	
	:	<u>OPINION</u>
Respondent	:	

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 2008CV0403

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: February 7, 2012

APPEARANCES:

For Petitioner:

Moises Ramirez, Pro Se
Allen Correctional Institution
P.O. Box 4501
Lima, Ohio 45802-4501

For Respondent:

Daniel J. Benoit, Esq.
Assistant Richland County Prosecutor
38 South Park, Second Floor
Mansfield, Ohio 44902

Richland County, Case No. 11CA87

Delaney, P.J.

{¶1} Petitioner Moises Ramirez has filed a “Motion for Writ of Mandamus” requesting a writ be issued which would require Respondent to rule on a motion that Petitioner filed in the trial court. Respondent has filed a Motion to Dismiss indicating the trial court has now ruled on the motion.

{¶2} Prior to reaching the merits of the motion for writ and motion to dismiss, we find Petitioner has not properly brought this action. R.C. 2731.04 provides, “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.” Failure to comply with these requirements is grounds for dismissal. *Thorne v. State*, 8th Dist. No. 85024, 2004-Ohio-6288; *Maloney v. Court of Common Pleas of Allen County*, 173 Ohio St. 226, 181 N.E.2d 270 (1962). Petitioner herein has not properly brought this cause as a petition in the name of the state. *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. See also, *Selway v. Court of Common Pleas Stark County*, 5th Dist. No. 2007CA00213, 2007-Ohio-4566.

{¶3} Petitioner also has failed to comply with R.C. 2969.25 by neglecting to file an affidavit detailing his prior civil filings. The Supreme Court has held, “[t]he requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal.” *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5.

{¶4} Even had Petitioner properly filed this cause, we would not find the issuance of a writ of mandamus to be warranted.

{¶5} For a writ of mandamus to issue, the relator must have a clear legal right to the relief prayed for, the respondents must be under a clear legal duty to perform the requested act, and relator must have no plain and adequate remedy in the ordinary course of law. *State, ex rel. Berger, v. McMonagle*, 6 Ohio St.3d 28, 451 N.E.2d 225 (1983).

{¶6} The Supreme Court has held, “[n]either procedendo nor mandamus will compel the performance of a duty that has already been performed. *State ex rel. Grove v. Nadel* (1998), 84 Ohio St.3d 252, 253, 703 N.E.2d 304, 305.” *State ex rel. Kreps v. Christiansen*, 88 Ohio St.3d 313, 318, 2000-Ohio335, 725 N.E.2d 663, 668.

{¶7} Because the relief requested in the motion has been obtained, a ruling on the motion pending in the trial court, we find the request for writ of mandamus to be moot.

{¶8} For this reason, Respondent's Motion to Dismiss is granted. The petition for a writ of mandamus is dismissed.

By: Delaney, P.J.

Wise, J. and

Edwards, J. concur

HON. PATRICIA A. DELANEY

HON. JOHN W. WISE

HON. JULIE A. EDWARDS

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	:	
RICHLAND COUNTY COMMON	:	
PLEAS COURT	:	
	:	
Respondent	:	

For the reasons stated in our accompanying Memorandum-Opinion, this cause is dismissed.

Costs taxed to Petitioner.

HON. PATRICIA A. DELANEY

HON. JOHN W. WISE

HON. JULIE A. EDWARDS