

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Nasear L. Smith

Court of Appeals No. L-26-00200

Relator

v.

Derek C. Burkhart

DECISION AND JUDGMENT

Respondent

Decided: September 1, 2026

* * * * *

Nasear L. Smith, pro se.

Derek Burkhart, pro se.

* * * * *

SULEK, J.

{¶ 1} This matter is before the court on the petition of relator Nasear L. Smith, a pro se inmate, for a writ of mandamus compelling respondent Derek C. Burkhart, the Warden Assistant for the Toledo Correctional Institution, to comply with R.C. 149.43, Ohio public records statute. For the reasons stated below, his petition for a writ of mandamus is sua sponte dismissed.

{¶ 2} In his petition, Smith alleges that on February 2, 2026, he submitted a public records request for a particular receipt from the prison commissary. He states that he was not informed of the cost or procedure required to obtain that receipt and his original request was denied. He then filed kites and grievances. After more than 60 days, Smith ultimately received the requested record, but only “after payment and continued effort.” He alleges that Burkhart’s actions caused an unreasonable delay and constituted a failure to comply with the mandatory duties under R.C. 149.43. Smith requests a writ of mandamus compelling Burkhart to comply with the public records laws. He also seeks statutory damages and court costs.

{¶ 3} “A court of appeals may dismiss a complaint sua sponte ‘if the complaint “is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint.”’” *State ex rel. Boyd v. Tone*, 2023-Ohio-3832, ¶ 9, quoting *State ex rel. Kerr v. Pollex*, 2020-Ohio-411, ¶ 5, quoting *State ex rel. Scott v. Cleveland*, 2006-Ohio-6573, ¶ 14. “Such a dismissal is appropriate only if, after presuming the truth of all material factual allegations of the petition and making all reasonable inferences in the claimant’s favor, it appears beyond doubt that the claimant can prove no set of facts entitling him to the requested extraordinary relief.” *Id.*, quoting *Kerr* at ¶ 5.

{¶ 4} “Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio’s Public Records Act.” *State ex rel. Zidonis v. Columbus State Community College*, 2012-Ohio-4228, ¶ 19, quoting *State ex rel. Physicians*

Commt. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees, 2006-Ohio-903, ¶ 6. “We construe the Public Records Act liberally in favor of disclosure of public records.” *Id.*, citing *State ex rel. Rucker v. Guernsey Cty. Sheriff’s Office*, 2010-Ohio-3288, ¶ 6. “But the relator must still establish entitlement to the requested extraordinary relief by clear and convincing evidence.” *Id.*, citing *State ex rel. Doner v. Zody*, 2011-Ohio-6117, paragraph three of the syllabus.

{¶ 5} Here, Smith’s petition fails both procedurally and substantively.

{¶ 6} Procedurally, “[e]ffective April 9, 2025, the General Assembly amended Ohio’s Public Records Act, R.C. 149.43, establishing new procedural requirements for a public-records requester to bring a mandamus action seeking to compel the production of public records and eliminating awards of statutory damages in such actions to relators who are incarcerated.” *State ex rel. Bates v. Jenkins*, 2026-Ohio-1994, ¶ 11. “The new procedures require a person seeking to enforce his rights under the Public Records Act by way of a mandamus action to provide the public office from which records were requested with notice and an opportunity to cure before filing suit.” *Id.*, citing *State ex rel. Jordan v. Dept. of Rehab. & Corr.*, 2025-Ohio-3051, ¶ 4 (DeWine, J., concurring).

{¶ 7} Specifically, R.C. 149.43(C)(1) provides that the requestor

may serve pursuant to Rule 4 of the Ohio Rules of Civil Procedure a complaint, on a form prescribed by the clerk of the court of claims, to the public office or person responsible for public records allegedly responsible for the alleged failure. Upon receipt of the complaint of the person allegedly aggrieved, the public office or person responsible for public records has three business days to cure or otherwise address the failure alleged in the complaint. The person

allegedly aggrieved shall not file a complaint with a court or commence a mandamus action under this section within the three-day period.

Upon the expiration of the three-day period, the requestor may either file a complaint pursuant to R.C. 2743.75 or commence a mandamus action. R.C. 149.43(C)(1)(a) and (b). If filing a mandamus action, R.C. 149.43(C)(2) requires that

a person allegedly aggrieved shall file with the court, in conjunction with the person's complaint or petition, a written affirmation stating that the person properly transmitted a complaint to the public office or person responsible for public records, the failure alleged in the complaint has not been cured or otherwise resolved to the person's satisfaction, and that the complaint was transmitted to the public office or person responsible for public records at least three business days before the filing of the suit.

"If the person fails to file an affirmation pursuant to this division, the suit shall be dismissed." R.C. 149.43(C)(2).

{¶ 8} Here, Smith does not allege that he submitted a complaint to respondent on the form prescribed by the clerk of the court of claims. He also has not filed with his mandamus petition the written affirmation required by R.C. 149.43(C)(2). Pursuant to that section, his failure to do so mandates that his petition be dismissed.

{¶ 9} Moreover, this court notes several other procedural failures with the petition. First, the caption of Smith's petition does not provide an address to serve respondent as required by 6th Dist.Loc.App.R. 33(B). Next, he has not filed the action "in the name of the state on the relation of the person applying" as required

by R.C. 2731.04. *See State v. Johnson*, 2024-Ohio-1511, ¶ 5 (6th Dist.), quoting *Brown v. Sargeant*, 2003-Ohio-3839, ¶ 2 (6th Dist.) (“Where the petition presented to this court is not in the name of the state on the relation of relator-appellant, [t]his deficiency alone is an adequate reason to deny the petition.”). Finally, although he provided an affidavit of indigency and a cashier’s statement pursuant to R.C. 2969.25(C)(1), he did not include the “Financial Disclosure/Affidavit of Indigency approved by the Ohio Public Defender’s Office [that] can be found on the Ohio Public Defender’s website” as required by 6th Dist.Loc.App.R. 33(D).¹

{¶ 10} Substantively, presuming the facts alleged by Smith are true, it is beyond doubt that he can prove no set of facts entitling him to relief.

{¶ 11} To the extent that he seeks a writ of mandamus to compel Burkhardt to comply with R.C. 149.43, his petition is moot. Smith admits in his petition that he has received the requested public record, and the Ohio Supreme Court has long held that “producing the requested records to a relator in a public-records mandamus case moots the claim.” *State ex rel. McDougald v. Greene*, 2020-Ohio-

¹ Smith also has not included an affidavit containing the description of each civil action that he has filed in the previous five years in any state or federal court as described in R.C. 2969.25(A). But, the statute “includes no requirement that inmates who have not filed a civil action or appeal of a civil action against a government entity or employee in the requisite five-year period file a [R.C. 2969.25(A)] affidavit.” *State ex rel. Walker v. Ballinger*, 2024-Ohio-181, ¶ 9, quoting *State ex rel. Wickensimer v. Bartleson*, 2009-Ohio-4695, ¶ 3. “Similarly, the statute does not require a statement that the inmate has filed no such civil action or appeal.” *Id.*, citing *Wickensimer* at ¶ 5.

3686, ¶ 9, citing *State ex rel. Glasgow v. Jones*, 2008-Ohio-4788, ¶ 27. Because Smith has already received the record, there is nothing left for this court to compel Burkhart to do.

{¶ 12} To the extent that he seeks statutory damages to compensate him for Burkhart’s alleged failure to produce the requested record in a timely manner in violation of R.C. 149.43, those damages are unavailable to him. R.C. 149.43(C)(3) directly states, “Statutory damages are not available pursuant to this section to a person committed to the custody of the department of rehabilitation and correction” This court, therefore, cannot award Smith statutory damages.

{¶ 13} Accordingly, because Smith’s petition fails to meet the procedural requirements of R.C. 149.43(C)(2), and because it does not allege facts that would entitle him to substantive relief, it is sua sponte dismissed. Costs of this action are assessed to Smith.

To the Clerk: Manner of Service

The clerk is directed to serve upon the parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

<u>Christine E. Mayle, J.</u>	<u>JUDGE</u>
<u>Myron C. Duhart, J.</u>	<u>JUDGE</u>
<u>Charles E. Sulek, J.</u> CONCUR.	<u>JUDGE</u>

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