

[Cite as *State ex rel. Bandarapalli v. Westlake Police Dept.*, 2011-Ohio-225.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95555

**STATE OF OHIO, EX REL.
RAJPAL BANDARAPALLI**

RELATOR

vs.

WESTLAKE POLICE DEPARTMENT

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 438291
Order No. 440924

RELEASE DATE: January 19, 2011

FOR RELATOR

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MARY J. BOYLE, P.J.:

{¶ 1} Rajpal Bandarapalli has filed a complaint for a writ of mandamus. Bandarapalli seeks to compel the Westlake Police Department to comply with the Ohio Public Records Act, R.C. 149.43, by providing him with copies of: (1) "police incident reports concerning all arrests made on January 14th, 2010"; (2) "all search warrants and supporting affidavits procured by Westlake Police Department on January 14th, 2010"; and (3) "all search warrants and supporting affidavits procured by Westlake Police Department on January 22nd, 2010".

{¶ 2} Initially, we find that Bandarapalli's complaint for a writ of mandamus is procedurally defective. Loc.App.R. 45(B)(1)(a) requires that the complaint must be supported by an affidavit specifying the details of the claim. Bandarapalli has attached to his complaint an affidavit that allegedly specifies the details of his complaint and a separate verification. The affidavit, which specifies the details of his complaint, is defective since it is not notarized. R.C. 2319.02; *Griffin v. McFaul*, 116 Ohio St.3d 30, 2007-Ohio-5506, 876 N.E.2d 527; *Chari v. Vore*, 91 Ohio St.3d 323, 2001-Ohio-49, 744 N.E.2d 763; *Humphrey v. Ohio Water Parks, Inc.* (1994), 97 Ohio App.3d 403, 646 N.E.2d 908. In addition, the conclusory statement of Bandarapalli in the "verification," in which he "hereby states that the foregoing petition for writ of mandamus/complaint and the affidavit is true and accurate to the best of his knowledge" does not satisfy the requirement in Loc.App.R. 45(B)(1)(a) that the complaint in an original action must be supported by an affidavit specifying the details of the claim. *State ex rel. Falkenstein* (Jan. 5, 2010), Cuyahoga App. No. 96187; *State ex rel. Hernandez v. Sutula*, Cuyahoga App. No. 94983, 2010-Ohio-290; *State ex rel. Stockwell v. Strickland-Saffold*, Cuyahoga App. No. 93680, 2009-Ohio-4884. The failure of Bandarapalli to comply with the mandatory requirements of Loc.App.R. 45(B)(1) requires that we deny the writ of mandamus. *State ex rel. Leon v.*

Cuyahoga Cty. Court of Common Pleas, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *Ambrose v. State ex rel. Holsey*, Cuyahoga App.No. 96065, 2010-Ohio-6203; *State ex rel. Menefee v. Burnside*, Cuyahoga App. No. 95747, 2010-Ohio-6034.

{¶ 3} Bandarapalli has also failed to comply with the mandatory requirements of R.C. 149.43(B)(8) which provides that:

{¶ 4} “A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction * * * to obtain a copy of *any public record concerning a criminal investigation or prosecution* * * *, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge’s successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.” (Emphasis added.)

{¶ 5} The Supreme Court of Ohio, with regard to the application of R.C. 149.43(B)(8), has established that:

{¶ 6} “The language of the statute is broad and encompassing. R.C. 149.43(B)[8] clearly sets forth heightened requirements for inmates seeking

public records. The General Assembly's broad language clearly includes offense and incident reports as documents that are subject to the additional requirement to be met by inmates seeking records concerning a criminal investigation or prosecution. The General Assembly clearly evidenced a public-policy decision to restrict a convicted inmate's unlimited access to public records in order to conserve law enforcement resources." *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶14.

{¶ 7} In the case sub judice, Bandarapalli was convicted of the offenses of promoting prostitution (R.C. 2907.22(A)(2) and (A)(4)) and possessing criminal tools (R.C. 2923.1417) on December 8, 2010. Bandarapalli was sentenced on January 6, 2011, to a term of incarceration of six months on each count, with each sentence to run concurrent to each other. The prior approval or finding of necessity of the sentencing judge to allow for access to the requested public records per R.C. 149.43(B)(4) is applicable to Bandarapalli's complaint for a writ of mandamus, since he was convicted and sentenced to incarceration during the pendency of his original action. *State ex rel. Dehler v. Spatny*, Slip Opinion No. 2010-Ohio-5711. See, also, *State ex rel. Brown v. Lemmerman*, 124 Ohio St.3d 296, 2010-Ohio-137, 921 N.E.2d 1049. Since Bandarapalli has not obtained the prior approval or a finding of necessity of the sentencing judge as required by R.C. 149.43(B)(4), the

Westlake Police Department is under no clear legal duty to release the requested records. *State ex rel. Russell v. Thornton*, supra.

{¶ 8} Finally, we find that the request for police incident reports and search warrants with supporting affidavits is moot. The Westlake Police Department, in its unopposed “reply to relator’s response to respondent’s motion for summary judgment/motion to dismiss” with attached supporting affidavit, which indicates that “[a]s of this date, Relator will have copies of all police reports and search warrants of the Westlake Police Department for the dates requested in his mandamus action.” *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 648 N.E.2d 723; *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163.

{¶ 9} Accordingly, we grant the Westlake Police Department’s motion for summary judgment. Costs to Bandarapalli. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Writ denied.

MARY J. BOYLE, PRESIDING JUDGE

JAMES J. SWEENEY, J., and

COLLEEN CONWAY COONEY, J., CONCUR