

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

KEVIN DUNSTON,	:	
	:	
Relator,	:	No. 110712
	:	
v.	:	
	:	
CUYAHOGA COUNTY COURT,	:	
	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED

DATED: November 12, 2021

Writ of Mandamus
Motion No. 548780
Order No. 550140

Appearances:

Kevin Dunston, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, *for respondent*.

FRANK D. CELEBREZZE, JR., P.J.:

{¶ 1} On August 3, 2021, the relator, Kevin Dunston, commenced this mandamus action against the respondent, the Cuyahoga County Court of Common Pleas. He seeks to compel the court to issue findings of fact and conclusions of law in disposing or removing a detainer, warrant #LAECI473887, which the Ohio

Department of Rehabilitation and Correction issued in regard to the underlying case, *State v. Dunston*, Cuyahoga C.P. No. CR-04-454560. Dunston argues that more than 180 days ago he filed a proper request for final disposition of the detainer pursuant to R.C. 2963.30, the Interstate Agreement on Detainers, and that the failure to resolve the request has deprived the respondent of jurisdiction over the matter. On August 25, 2021, the respondent, through the Cuyahoga County Prosecutor, moved for summary judgment on the grounds of pleading deficiencies and the inapplicability of R.C. 2963.30 to parole detainees. Dunston never filed a response. For the following reasons, this court grants the respondent's motion for summary judgment.

{¶ 2} In the underlying case in July 2004, the grand jury indicted Dunston for drug possession, a fifth-degree felony; falsification, a first-degree misdemeanor; and criminal trespass, a fourth-degree misdemeanor. In October 2004, Dunston pleaded guilty to all charges, and the trial court sentenced him to six months in prison on the drug charge, but suspended the imposition of sentence on the other two counts. The docket records that Dunston was delivered to the Lorain Correctional Institution on October 14, 2002.¹

¹ In addition to the case Dunston specifically mentions, he has had three other Cuyahoga County criminal cases: (1) *State v. Dunston*, Cuyahoga C.P. No. CR-02-424724-B in which he pleaded guilty to robbery a third-degree felony and received a one-year prison sentence in 2002; (2) *State v. Dunston*, Cuyahoga C.P. No. CR-03-443078-ZA in which he pleaded guilty to drug possession, a fifth-degree felony, and received a six-month prison sentence; and (3) *State v. Dunston*, Cuyahoga C.P. No. CR-05-470987-A, in which the grand jury indicted him for escape in 2005, and in which a capias was issued when he failed to appear at arraignment. On September 3, 2020, the state of Ohio dismissed the charges

{¶ 3} Dunston is now imprisoned in California. He avers that in March 2020, he received a notice of an outstanding detainer from the Ohio Department of Rehabilitation and Correction. It does not appear that he attached the actual detainer. On August 18, 2020, Dunston filed in his four criminal cases his “Notice of place of imprisonment and request for disposition of indictments, informations or complaints.” As gleaned from the docket of the underlying case, Dunston’s notice lists the warrant number and that it was issued for a drug possession conviction.

{¶ 4} To be entitled to a writ of mandamus, a party must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Love v. O’Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3. Mandamus is an extraordinary remedy, which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977).

{¶ 5} R.C. 2963.30, Article III(a) provides in pertinent part as follows:

Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer’s jurisdiction written notice

noting that Dunston is imprisoned in California and not eligible for parole until September 15, 2022.

of the place of his place of imprisonment and his request for a final disposition to be made of the indictment, information or complaint
* * *

{¶ 6} Article IV (e) provides:

If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

{¶ 7} Similarly, Article V (C) provides:

If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article II or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

{¶ 8} From these provisions, Dunston concludes that because he has properly provided notice of his parole detainer and more than 180 days has elapsed since providing that notice, the respondent court has the duty to dispose or remove the detainer.

{¶ 9} However, R.C. 2963.30 does not apply to parole detainers; it only applies to indictments, informations, and complaints. The United States Supreme Court in *Carchman v. Nash*, 473 U.S. 716, 725, 105 S.Ct. 3401, 87 L.Ed.2d 516 (1985), ruled:

The language of the Agreement [R.C. 2963.30] therefore makes clear that the phrase 'untried indictment, information or complaint' in Art. III refers to criminal charges pending against a prisoner. A probation-

violation charge, which does not accuse an individual with having committed a criminal offense in the sense of initiating a prosecution, thus does not come within the terms of Art. III.

The courts of Ohio followed *Nash*. In *State v. Short*, 7th Dist. Columbiana No. 08 CO 22, 2009-Ohio-3331, ¶ 19, the court of appeals held: “A detainer for parole violation does not fall with the definition of a detainer for an untried indictment, information or complaint.” *State v. Keeble*, 2d Dist. Greene No. 03CA84, 2004-Ohio-3785. Thus, Dunston’s claim fails because his case falls outside the scope of the statute, and there is no duty to dismiss the detainer.

{¶ 10} The court also notes that Dunston’s complaint is fatally deficient. R.C. 2969.25(C) requires an inmate who seeks a waiver of the court’s filing fees when commencing a complaint must attach a poverty affidavit and a statement setting forth the balance in the inmate’s account for the preceding six months. Dunston attached neither of these requisites. The court further notes that the docket confirms that there was no poverty affidavit and that no payment was provided. The requirements of R.C. 2969.25 are mandatory; the failure to comply with them requires dismissal of the inmate’s complaint. *State ex rel. Neil v. French*, 153 Ohio St.3d 271, 2018-Ohio-2692, 104 N.E.3d 764.

{¶ 11} Additionally, R.C. 2731.04 requires that an action for mandamus “be * * * in the name of the state on the relation of the person applying.” Dunston did not properly caption his case, “State ex rel.” as required and did not seek to amend his complaint. This provides another independent reason to dismiss his complaint.

Rust v. Lucas Cty. Bd. of Elections, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766.

{¶ 12} To the extent that Dunston’s complaint actually concerns the escape charge in Case No. CR-o5-470987-A, the state of Ohio has dismissed the charge. The matter is moot.

{¶ 13} The court also notes that generally findings of fact and conclusions of law are not required for a ruling other than for an authentic postconviction relief petition under R.C. 2953.21 or other statutory requirement. *State ex rel. Jefferson v. Russo*, 8th Dist. Cuyahoga No. 90682,2008-Ohio-135 and *State v. Minter*, 8th Dist. Cuyahoga No. 101997, 2015-Ohio-23.

{¶ 14} Accordingly, this court grants the respondent’s motion for summary judgment and denies the application for a writ of mandamus. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of the judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 15} Writ denied.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

LISA B. FORBES, J., and
EMANUELLA D. GROVES, J., CONCUR