

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, EX REL.	:	
TRAMAINE E. MARTIN,	:	
	:	
Relator,	:	No. 114409
	:	
v.	:	
	:	
HON. TIMOTHY P. MCCORMICK,	:	
	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED

DATED: November 26, 2024

Writ of Procedendo
Motion No. 579031
Order No. 579510

Appearances:

Tramaine E. Martin, *pro se*.

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

KATHLEEN ANN KEOUGH, A.J.:

{¶ 1} Relator, Tramaine E. Martin, seeks a writ of procedendo directing respondent, Judge Timothy P. McCormick, to rule on a postconviction-relief petition filed in an underlying criminal case that is not identified in Martin's

complaint. Because Martin’s complaint fails to satisfy the mandatory requirements of R.C. 2969.25(C), respondent’s motion for summary judgment is granted and Martin’s request for relief is denied.

I. Background

{¶ 2} On September 30, 2024, Martin filed the instant complaint for writ of procedendo. There, he alleged that in an underlying criminal case he filed a postconviction-relief petition on May 6, 2024. On that same date, he alleged that he also filed a motion to correct illegal sentence. The State filed an opposition to the motion to correct sentence but did not otherwise oppose the postconviction-relief petition. On May 14, Martin alleged that respondent denied the motion to correct illegal sentence but did not rule on the postconviction-relief petition, which remains pending. Martin took an appeal from the denial of the motion to correct illegal sentence. The trial court’s decision was affirmed by this court in an opinion issued on November 21, 2024. *State v. Martin*, 2024-Ohio-5486 (8th Dist.).

{¶ 3} On October 28, 2024, respondent filed a motion for summary judgment,¹ alleging that Martin’s requested relief should be denied because his complaint did not comply with R.C. 2969.25. The State further argued the trial court was deprived of jurisdiction to rule on the pending postconviction-relief petition when Martin appealed the denial of the motion to correct illegal sentence because it would interfere with this court’s ability to review the issues pending in the appeal.

¹ Respondent filed a motion for summary judgment on October 25, 2024, but that motion was stricken for failure to comply with Loc.App.R. 13.2.

{¶ 4} Martin filed a brief in opposition to respondent’s motion for summary judgment on November 12, 2024, arguing that he complied with R.C. 2969.25 and that respondent had jurisdiction to rule on the postconviction-relief petition.

II. Law and Analysis

{¶ 5} “A writ of procedendo may be used to compel an inferior, dilatory court to proceed to a final judgment.” *State ex rel. Bechtel v. Cornachio*, 2021-Ohio-1121, ¶ 7, quoting *State ex rel. O’Malley v. Russo*, 2019-Ohio-1698, ¶ 32. Like a writ of mandamus, a writ of procedendo may issue when a relator shows by clear and convincing evidence a clear legal right to require the respondent to proceed to judgment, a clear legal duty for respondent to do so, and a lack of another adequate remedy in the ordinary course of the law. *Id.* at ¶ 7, quoting *State ex rel. White v. Woods*, 2019-Ohio-1893, ¶ 7, quoting *State ex rel. Ward v. Reed*, 2014-Ohio-4512, ¶ 9.

{¶ 6} The case is before this court on respondent’s motion for summary judgment. “Summary judgment is proper when an examination of all relevant materials filed in the action reveals that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *State ex rel. A.N. v. Cuyahoga Cty. Prosecutor’s Office*, 2021-Ohio-2071, ¶ 7, citing Civ.R. 56(C).

{¶ 7} To be entitled to relief in an original action, those incarcerated in a State institution must satisfy the requirements of R.C. 2969.25 when they file a

complaint or petition against a government entity or employee. These requirements are mandatory. *State ex rel. Roden v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-408, ¶ 7. Further, a lack of compliance may not be corrected at a later date. *State ex rel. Swain v. Ohio Adult Parole Auth.*, 2017-Ohio-9175. The failure to strictly meet these obligations requires the denial of the requested relief. “R.C. 2969.25(C) does not permit substantial compliance.” *State ex rel. Neil v. French*, 2018-Ohio-2692, ¶ 7, citing *State ex rel. Manns v. Henson*, 2008-Ohio-4478, ¶ 4.

{¶ 8} Respondent argues that he is entitled to judgment as a matter of law because, among other reasons, respondent failed to comply with R.C. 2969.25.²

{¶ 9} R.C. 2969.25(C) requires an inmate in a State correctional institution who seeks to waive the prepayment of the filing fees when commencing an action against a government entity or employee must file an affidavit of indigency and an affidavit of waiver that contains each of the following:

- (1) A statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier;
- (2) A statement that sets forth all other cash and things of value owned by the inmate at that time.

R.C. 2969.25(C)(1)-(2).

² In his motion for summary judgment, respondent also argued that Martin did not comply with R.C. 2969.25(A) by filing an affidavit of prior civil actions or appeals commenced against a government entity or employee within the past five years. However, Martin did provide this affidavit with his complaint.

{¶ 10} Martin’s complaint includes an affidavit of indigency and a statement of his inmate account for the six-month period between March 11, 2024, through September 13, 2024. However, the statement is not certified by the institutional cashier and no such certification is included with the complaint.

{¶ 11} Respondent argues that this is a fatal defect that requires denial of the requested relief. Martin counters that “[a] printed six-month balance statement of the inmate’s trust account has been the accepted practice for compliance with the statute. . . .” Martin is mistaken.

{¶ 12} The Supreme Court of Ohio has held that the requirements of R.C. 2969.25 are mandatory and the failure to strictly comply requires dismissal of the complaint. *State ex rel. Ridenour v. Brunsman*, 2008-Ohio-854, ¶ 5. There, the Court affirmed the dismissal of a complaint that included a purported statement of the inmate’s account but lacked a certification by the institutional cashier. *Id.* at ¶ 5. *Accord State ex rel. Swain*, 2017-Ohio-9175, at ¶ 4; *Green v. Sutula*, 2022-Ohio-3925, ¶ 8 (8th Dist.).

{¶ 13} Martin has failed to strictly comply with R.C. 2969.25(C)(1). Therefore, respondent is entitled to judgment as a matter of law. Respondent’s motion for summary judgment is granted. Martin’s request for relief is denied. Martin is to bear the costs of this action. The clerk is directed to serve on the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶ 14} Writ denied.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

MICHELLE J. SHEEHAN, J., and
EILEEN T. GALLAGHER, J., CONCUR