

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-002024-MR

WINSTON BRISCOE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ERNESTO M. SCORSONE, JUDGE
ACTION NO. 08-CI-04789

LARRY ROBERTS, FAYETTE
COUNTY ATTORNEY AND
WILMA F. LYNCH, FAYETTE
CIRCUIT COURT CLERK

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE AND TAYLOR, JUDGES; BUCKINGHAM,¹ SENIOR
JUDGE.

TAYLOR, JUDGE: Winston Briscoe brings this *pro se* appeal from an October 8,
2008, order of the Fayette Circuit Court denying Briscoe's petition for writ of
mandamus. We affirm.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Briscoe was an inmate at the Fayette County Detention Center when he was charged with the offense of the first-degree sodomy allegedly committed against another inmate, Jaime Price. Briscoe was convicted of said offense and sentenced to twenty-years' imprisonment.

Briscoe then filed a *pro se* writ of mandamus in the Fayette Circuit Court. Therein, Briscoe sought to compel Fayette County Attorney, Larry Roberts, and Fayette Circuit Court Clerk, Wilma Lynch, to issue warrants of arrest for Sharon Dean and Doris Zirbes, who were apparently guards at the Detention Center. Briscoe alleged that Dean and Zirbes allowed Briscoe and Price to have consensual sex while in custody and are “guilty of Complicity – Abuse of Public Office/Abuse of Powers.” By order entered October 8, 2008, the circuit court denied Briscoe’s petition for writ of mandamus. This appeal follows.

Briscoe contends that the circuit court erred by denying his petition for writ of mandamus. We disagree.

A writ of mandamus is an extraordinary remedy that compels the performance of a ministerial act or ministerial duty. *Sowers v. Lewis*, 241 S.W.3d 319 (Ky. 2007). Herein, a prosecutor’s decision to bring charges against Dean and Zirbes is a discretionary act, as opposed to a ministerial act. *See Flynt v. Com.*, 105 S.W.3d 415 (Ky. 2003). Therefore, a writ of mandamus will not lie to compel performance thereof. Moreover, Wilma Lynch, in her capacity as Fayette Court

Clerk, does not have the authority to initiate criminal charges. As such, we hold that the circuit court properly denied Briscoe's writ of mandamus.

For the foregoing reasons, the order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Winston Briscoe, *Pro Se*
Beattyville, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
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