

[Cite as *State ex rel Farraj v. State*, 2004-Ohio-5377.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 85109

STATE OF OHIO, EX. REL.,	:	ORIGINAL ACTION
SAMI FARRAJ	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
STATE OF OHIO	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION:

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Dismissed.
Motion No. 363805

APPEARANCES:

For Relator: SAMI FARRAJ, pro se
Inmate No. 451-101
Belmont Correctional Inst.
P. O. Box 540
St. Clairsville, Oh 43950

For Respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: AMY VENESILE
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

Judge Frank D. Celebrezze, Jr.:

{¶ 1} On August 16, 2004, relator, Sami Farraj, commenced this mandamus action against respondent, Judge David T. Matia, to compel him to run his sentences in *State v. Farraj*, Cuyahoga County Court of Common Pleas Case Nos. CR-433355 and CR- 434799 concurrently. On September 9, 2004, respondent, through the Cuyahoga County Prosecutor, filed an answer and a motion for summary judgment. Farraj did not respond to the motion for summary judgment. For the following reasons, we grant the respondent's motion for summary judgment.

{¶ 2} A review of the record indicates that this court vacated Farraj's sentence and remanded the matter for re-sentencing in *State v. Farraj* (Apr. 29, 2004), Cuyahoga App. Nos. 83660 and 83377, 2004-Ohio-2163, because the trial court failed to find that consecutive sentences were not disproportionate to the seriousness of Farraj's conduct. Thereafter, on June 21, 2004, Judge Matia resentenced Farraj and again imposed consecutive sentences. Farraj did not appeal his resentencing.

{¶ 3} In order for this court to issue a writ of mandamus, a relator must establish that: 1) the relator possesses a clear legal right to the relief prayed; 2) the respondent possesses a clear legal duty to perform the requested act; and 3) the relator possesses no plain and adequate remedy in the ordinary course of the law. *State ex rel. Manson v. Morris* (1993), 66 Ohio St. 3d 440, 613 N.E.2d 232, citing *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St. 3d 28, 451 N.E.2d 225.

{¶ 4} In this matter, we find that Farraj failed to establish that Judge Matia possessed a duty to run his sentences concurrently. As pointed out by respondent, Farraj was mistaken in believing that this court ordered the lower court to run his sentences concurrently. We also find that Farraj

possesses an adequate remedy at law by filing a delayed appeal with this court. *State ex rel. Gadsden v. Lioi, Judge*, 93 Ohio St.3d 574, 2001-Ohio-1611, 757 N.E.2d 355; *Grundstein v. Judge Carroll* (May 3, 2004), Cuyahoga App. No. 83885, 2004-Ohio-2346.

{¶ 5} Additionally, Farraj failed to support his complaint with an affidavit “specifying the details of the claim” as required by Local Rule 45(B)(1)(a). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077; *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶ 6} Farraj also failed to comply with R.C. 2969.25 which mandates that he attach an affidavit to his complaint that describes each civil action or appeal of a civil action filed in the previous five years. The failure to provide such affidavit constitutes sufficient grounds for dismissal of the relator’s complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Board* (1998), 82 Ohio St.3d 421, 696 N.E.2d 594; *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285, 685 N.E.2d 1242.

{¶ 7} Accordingly, we grant the respondent’s motion for summary judgment. Relator to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ dismissed.

FRANK D. CELEBREZZE, JR.
PRESIDING JUDGE

JAMES J. SWEENEY, P.J., CONCURS

SEAN C. GALLAGHER, J., CONCURS

