

[Cite as *State ex rel. McGrath v. McDonnell*, 2010-Ohio-2610.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94819

**STATE OF OHIO, EX REL.
JOSEPH MCGRATH**

RELATOR

vs.

JUDGE NANCY R. MCDONNELL

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus
Motion No. 432728
Order No. 434153

RELEASE DATE: June 8, 2010

FOR RELATOR

Joseph McGrath, pro se
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ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: James E. Moss
Assistant County Prosecutor
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COLLEEN CONWAY COONEY, J.:

{¶ 1} Joseph McGrath, the relator, has filed a complaint for a writ of mandamus. McGrath seeks an order from this court, which requires Judge Nancy R. McDonnell, the respondent, to vacate the sentence that was imposed in *State v. McGrath*, Cuyahoga County Court of Common Pleas Case No. CR-449129. McGrath's request for a writ of mandamus is premised upon the alleged failure of Judge McDonnell to impose postrelease control in his underlying case. Judge McDonnell has filed a motion to dismiss, which we grant for the following reasons.

{¶ 2} Initially, we find that McGrath has failed to comply with R.C. 2969.25(A), which requires the attachment of an affidavit to his complaint for a writ of mandamus that describes each civil action or appeal filed within the previous five years in any state or federal court system. The “Affidavit of Prior Civil Actions R.C. 2969.25,” attached to McGrath’s complaint, provides that he is not required to provide information regarding his prior filings, since the information is already in the possession of “the Government.” McGrath also asserts the “right to remain silent and to not bear witness against myself on the basis that it may incriminate me in relation to this statute or other.” McGrath’s assertions, as to compliance with R.C. 2969.25(A), however, were previously raised through a separate complaint for a writ of mandamus and found to be without merit. See *State ex rel. McGrath v. Matia*, Cuyahoga App. No. 94147, 2010-Ohio-1987. McGrath’s failure to comply with R.C. 2969.25(A) warrants the dismissal of his complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

{¶ 3} It must also be noted that McGrath has failed to comply with R.C. 2969.25(C), which requires that an inmate who files a complaint against a governmental entity or government employee must support the complaint

with a statement that: (1) sets forth the balance in the inmate's account for the preceding six months, as certified by the institutional cashier; and (2) a statement that sets forth all other cash and items of value owned by the inmate. McGrath's failure to comply with R.C. 2969.25(C), through a financial statement, warrants dismissal of his complaint for a writ of mandamus. *Martin v. Woods*, 121 Ohio St.3d 609, 2009-Ohio-1928, 906 N.E.2d 1113. We also deny McGrath's claim of indigency and order him to pay costs, based on the failure to comply with R.C. 2969.25(C). See *State ex rel. McGrath v. Matia*.

{¶ 4} Finally, we find that McGrath has failed to establish that he is entitled to a writ of mandamus. In order for this court to issue a writ of mandamus, McGrath must affirmatively establish each prong of the following three-part test: (1) McGrath possesses a clear legal right to the requested relief; (2) Judge McDonnell possesses a clear legal duty; and (3) McGrath possesses no other adequate remedy in the ordinary course of the law. *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 374 N.E.2d 641. *State ex rel. Natl. City Bank v. Bd. of Edn.* (1977), 52 Ohio St.2d 81, 369 N.E.2d 1200.

{¶ 5} In the case sub judice, McGrath has failed to establish each prong of the aforesaid three-part test. The Supreme Court of Ohio, in *Patterson v. Ohio Adult Parole Auth.*, 120 Ohio St.3d 311, 2008-Ohio-6147, 898 N.E.2d

950, held that an original action may not be employed to raise a claim of improper notification of postrelease control, because there exists an adequate remedy by way of a direct appeal.

{¶ 6} In addition, this court, in *State ex rel. McGrath v. Matia*, addressed the identical issue McGrath currently raises and held that:

{¶ 7} “McGrath relies on *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, as the basis for asserting that his sentences are void. “However, the Supreme Court of Ohio has rejected the use of extraordinary writs to remedy error in the imposition of postrelease control. In [*State v.] Bezak*, [114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961], ¶16, the Supreme Court of Ohio held that if a sentence is void for failing to impose postrelease control, then ‘the sentence must be vacated and the matter remanded to the trial court for resentencing.’ The use of the word “remand” necessarily implies that the case is on appeal. Significantly, the procedural posture of *Bezak* [and] *Simpkins* * * * involved appeals, not extraordinary writs.” *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, Cuyahoga App. No. 93814, 2010-Ohio-1066, at ¶11. Clearly, McGrath has not established a basis for relief in mandamus.” *Id.* at ¶5.

{¶ 8} It must also be noted that the Supreme Court of Ohio, in *State ex rel. Pruitt v. Cuyahoga Cty. Court of Common Pleas*, Slip Opinion No.

2010-Ohio-1808, established that a sentencing entry, which included language that postrelease control was part of a sentence, provided sufficient notice of postrelease control and any claimed errors must be pursued through an appeal rather than by an extraordinary writ.

{¶ 9} “Moreover, notwithstanding Pruitt’s assertions to the contrary, that sentencing entry sufficiently included language that postrelease control was part of his sentence so as to afford him sufficient notice to raise any claimed errors on appeal rather than by extraordinary writ. See *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78, ¶51-53 (although petitioners’ sentencing entries mistakenly included wording suggesting that postrelease control was discretionary rather than mandatory, they were sufficient to authorize the Adult Parole Authority to impose postrelease control, and petitioners had an adequate remedy at law by appeal to raise any sentencing error).” *State ex rel. Pruitt v. Cuyahoga Cty. Court of Common Pleas*, at ¶4.

{¶ 10} Accordingly, we grant Judge McDonnell’s motion to dismiss. Costs to McGrath. 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).

Complaint dismissed.

COLLEEN CONWAY COONEY, JUDGE

MARY EILEEN KILBANE, P.J., and
ANN DYKE, J., CONCUR