

[Cite as *State ex rel. Pickett v. McMonagle*, 2010-Ohio-4368.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95362

**STATE OF OHIO, EX REL.
EDWARD PICKETT**

RELATOR

vs.

JUDGE TIMOTHY MCMONAGLE

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus
Motion Nos. 435941 and 437035
Order No. 437104

RELEASE DATE: September 14, 2010

FOR RELATOR

Edward Pickett, pro se
1801 E. 12th Street, #717
Cleveland, Ohio 44114

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: James E. Moss
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

JAMES J. SWEENEY, J.:

{¶ 1} Relator, Edward Pickett, is the defendant in *State v. Pickett*, Cuyahoga County Court of Common Pleas Case Nos. CR-533533 and CR-536728, which have been assigned to respondent judge. Pickett asserts that the date of offense in Case No. CR-536728 is the same as in Case No. CR-533533. As a consequence, he requests that this court issue a writ of mandamus compelling respondent to dismiss Case No. CR-533533.

{¶ 2} Respondent has filed a motion to dismiss and observes that Pickett is asserting double jeopardy as a ground for relief in mandamus. Pickett has not filed a response to the motion to dismiss. He did, however, file a motion for

summary judgment (without any supporting, evidentiary material) in which he contends that the federal constitution prohibits prosecution “under 2 different case numbers pertaining to the same alleged [sic] charges.”

{¶ 3} It is well-established, however, that a “double jeopardy claim is not cognizable in mandamus.” *State ex rel. Dix v. McAllister*, 81 Ohio St.3d 107, 108, 1998-Ohio-646, 689 N.E.2d 561. We must hold, therefore, that Pickett’s complaint in mandamus fails to state a claim upon which relief can be granted, grant respondent’s motion to dismiss and deny Pickett’s motion for summary judgment.

{¶ 4} Pickett’s complaint and supporting documentation are also defective. That is, he has failed to file an affidavit specifying the details of the claim as required by Loc.App.R. 45(B)(1)(a). *Morris v. Bur. of Sentence Computation*, Cuyahoga App. No. 89517, 2007-Ohio-1444 (dismissing a complaint in mandamus).

{¶ 5} Accordingly, respondent’s motion to dismiss is granted and relator’s motion for summary judgment is denied. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Complaint dismissed.

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR