

[Cite as *State ex rel. Menefee v. Burnside*, 2010-Ohio-6034.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95747

**STATE OF OHIO, EX REL.
DAVID MENEFEE**

RELATOR

vs.

JUDGE JANET R. BURNSIDE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion Nos. 438358 and 438972
Order No. 439464

RELEASE DATE: December 7, 2010

FOR RELATOR

David Menefee, pro se
Inmate No. 492-189
P.O. Box 59-H.C.F.
Nelsonville, Ohio 45764

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, David Menefee,¹ requests that this court issue a writ of mandamus compelling respondent judge to “grant all of his Jail-Time Credit” in *State v. Menefee*, Cuyahoga County Court of Common Pleas Case No. CR-463476.

{¶ 2} Respondent has filed a motion for summary judgment. She observes that Menefee previously filed an original action in mandamus in this

¹ The caption of relator’s complaint stated his name as “David Manefee.” By separate order, this court instructed the clerk to correct the caption to reflect the proper spelling of relator’s last name as “Menefee.”

court seeking to compel the same judge to grant him an additional seven days jail-time credit in Case No. CR-463476. “In the present case, the respondent judge fulfilled her duty by specifying the number of days of jail-time credit in the sentencing entry. Her denial of Menefee's subsequent motion for additional jail-time credit was an exercise of discretion for which Menefee has or had an adequate remedy at law through appeal. [*State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, 786 N.E.2d 1286]. Therefore, he cannot satisfy the requisites for mandamus, and this court denies his application for a writ.” *State ex rel. Menefee v. Burnside*, Cuyahoga App. No. 93702, 2009-Ohio-5842, ¶5 (footnote deleted).

{¶ 3} Clearly, this court has already rejected Menefee’s request for relief in mandamus to compel an increase in his jail-time credit. Res judicata, therefore, bars this action. See, e.g., *State ex rel. Clutter v. Wiseman*, ___ Ohio St.3d ___, 2010-Ohio-4987, ___ N.E.2d ___ .

{¶ 4} In his response to the motion for summary judgment, Menefee argues that he is entitled to relief in mandamus because his appeal time has run. As this court noted in Case No. 93702, supra, however, if a party has or *had* an adequate remedy, relief in mandamus is not appropriate.

{¶ 5} Attached to respondent’s motion for summary judgment is a copy of the September 15, 2005 sentencing entry in which respondent specified that Menefee would receive 31 days jail-time credit. Also attached to the motion for

summary judgment is a copy of a June 18, 2010 journal entry setting forth the specifics of respondent's calculation of jail-time credit and stating various periods of 5, 3 and 33 days for a total of 41 days jail-time credit. In the same entry, respondent states that the court notified the Ohio Department of Rehabilitation and Corrections on September 20, 2005 that Menefee's aggregate jail-time credit was 41 days.

{¶ 6} "It is well-established * * * that a trial court discharges its duty by issuing a journal entry specifying the number of days of jail-time credit. 'In addition, once [a judge] has specified the a [sic] number of days of jail-time credit, [the relator] possesses or possessed an adequate remedy at law through a direct appeal to this court.'"² *State ex rel. Holden v. Sutula*, Cuyahoga App. No. 94484, 2010-Ohio-1875, ¶3. By specifying the number of days of jail-time credit, respondent has discharged her duty and Menefee does not have a clear legal right to relief in mandamus. As a consequence, we grant respondent's motion for summary judgment.

{¶ 7} Additionally, Menefee's complaint and supporting documentation are defective in ways that require dismissal. Although he attaches an affidavit in which he states that he has not filed a lawsuit in state or federal court within the

² "*State ex rel. Ford v. Gaul*, Cuyahoga App. No. 94501, 2010-Ohio-782, at ¶3 (citations deleted)."

last five years, he filed Case No. 93702, *supra*, in 2009. See R.C. 2969.25. Compare *Brown v. Reid*, Cuyahoga App. No. 94384, 2010-Ohio-527, ¶9. Also, he has failed to include a certified copy of the prison cashier's statement of the balance in his inmate account as required by R.C. 2969.25(C). *State ex rel. Bristow v. Sidoti* (Dec. 1, 2000), Cuyahoga App. No. 78708, at 3-4. Likewise, in this action, we deny relator's claim of indigency and order him to pay costs. Additionally, "[t]he failure to comply with R.C. 2969.25 warrants dismissal of the 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 and *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285, 685 N.E.2d 1242." *State ex rel. Hite v. State*, Cuyahoga App. No. 79734, 2002-Ohio-807, at 6.

{¶ 8} Menefee also filed this action as "*David Menefee v. Judge Janet R. Burnside*." This caption is inappropriate. "A complaint for a writ of mandamus must be brought in the name of the state, on relation of the person applying. The failure of relator to properly caption his complaint for a writ of mandamus warrants dismissal. R.C. 2731.04; *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004 Ohio 5596, 817 N.E.2d 382; *Gannon v. Gallagher* (1945) 145 Ohio St. 170, 60 N.E.2d 666; *Dunning v. Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763." *State v. McMonagle*, Cuyahoga App. No. 91477, 2008-Ohio-3798, at ¶2. He also did not "support his complaint with an affidavit 'specifying the details of the claim' as required by Local Rule 45(B)(1)(a). *State ex rel. Leon v.*

Cuyahoga Cty. Court of Common Pleas, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402 * * * ." *State ex rel. Huffman v. Ambrose*, Cuyahoga App. No. 95546, 2010-Ohio-5376, ¶8 (additional citations deleted).

{¶ 9} Accordingly, respondent's motion for summary judgment is granted. 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).

Writ denied.

JAMES J. SWEENEY, JUDGE

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