

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE EX REL. L'DDARYL ELLIS,

Relator,

v.

CHRISTOPHER LAROSE, WARDEN ET AL.,

Respondents.

OPINION AND JUDGMENT ENTRY

Case No. 19 MA 0057

Writ of Mandamus/Procedendo

BEFORE:

Gene Donofrio, Cheryl L. Waite, David A. D'Apolito, Judges.

JUDGMENT:

Dismiss

L'Ddaryl Ellis, (PRO SE), A641-151, 2240 Hubbard Road, Youngstown, Ohio 44505, for Relator, and

Atty. David Yost, Ohio Attorney General, *Atty. George Horvath*, Assistant Attorney General, 150 East Gary Street, 16th Floor, Columbus, Ohio 43215, and *Atty. Timothy Bojanowski*, Struck, Love, Bojanowski & Acedo, P.L.C., 3100 West Ray Road, Suite 300, Chandler, AZ 85226 for Respondents.

March 24, 2020

PER CURIAM.

{¶1} Relator L'Ddaryl Ellis, proceeding on his own behalf, has filed this original action seeking a writ of mandamus and procedendo against two respondents. The first is Respondent Christopher LaRose, warden of the Northeast Ohio Correctional Center (NEOCC), operated by Core Civic, located at 2240 Hubbard Road in Youngstown, Mahoning County, Ohio. Core Civic, a for-profit company listed on the New York Stock Exchange, contracts with the U.S. Immigration and Customs Enforcement (ICE) to house immigrant detainees, the United States Marshals Service to house captured fugitives, and the Ohio Department of Rehabilitation and Correction (ODRC) for criminal defendants to serve their term of imprisonment imposed by an Ohio state trial court following a felony conviction. Relator falls within the last category, currently serving a prison term as an inmate of the ODRC. The second is Respondent Annette Chambers-Smith, Director of the ODRC.

{¶2} Relator is currently serving a mandatory 15-year to life prison sentence in the ODRC section of Core Civic as the result of his bench-trial conviction in 2013 for murder and felonious assault in the Cuyahoga County Common Pleas Court case number CR-568532-A. Relator seeks an order from this Court that would compel Respondents to convey him to the Cuyahoga County Jail to await a resentencing hearing in the Cuyahoga County Common Pleas Court pursuant to the Eighth District Court of Appeal's decision in his direct appeal in *State v. Ellis*, 8th Dist. Cuyahoga No. 99803, 2014-Ohio-116, which vacated Relator's conviction for aggravated riot. Respondent LaRose and Respondent Chambers-Smith have each filed their own motions to dismiss.

Procedural Deficiency – Civil Litigation History

{¶3} Petitioner's pleadings fail to comply with the civil litigation history requirement found in section R.C. 2969.25(A):

At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains *a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court*. The affidavit shall include all of the following for each of those civil actions or appeals:

(1) *A brief description of the nature of the civil action or appeal;*

(2) *The case name, case number, and the court in which the civil action or appeal was brought;*

(3) *The name of each party to the civil action or appeal;*

(4) *The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate’s counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award.*

{¶4} Although Relator filed an affidavit containing a description of some of the civil actions that he has filed, it fails to contain a description of each civil action or appeal of a civil action that he has filed in the previous five years in any state or federal court, as required by R.C. 2969.25(A). More specifically, he failed to include at least one case—*State v. Ellis*, 8th Dist. Cuyahoga No. 101603, 2015-Ohio-1642. Even though Relator acknowledges the case and others he failed to include in subsequent pleadings, the Ohio Supreme Court has specifically held that a Relator’s “belated attempt to file the required affidavit does not excuse his noncompliance.” *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982; R.C. 2969.25(A) (which requires that the affidavit be filed “[a]t the time that an inmate commences a civil action or appeal against a government entity or employee.” Therefore, Relator’s failure to include all of the required information

in his affidavit mandates the dismissal of this original action on that basis alone. *Robinson v. LaRose*, 147 Ohio St.3d 473, 2016-Ohio-7647, 67 N.E.3d 765, ¶ 11.

Substantive Shortcomings – Adequate Remedy at Law; Res Judicata

{¶5} Turning to the substantive claim presented by Relator’s petition, a writ of mandamus/procedendo is an extraordinary remedy; one which should be exercised by this Court with caution and issued only when the right is clear. *State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 142 Ohio St.3d 370, 2014-Ohio-4022, 31 N.E.3d 596, ¶ 11. Entitlement to a writ of mandamus/procedendo requires the relator to demonstrate: (1) they have a clear legal right to the relief, (2) the respondent has a clear legal duty to provide that relief, and (3) relator has no adequate remedy at law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12.

{¶6} The assessment of Relator’s claim begins with Eighth District Court of Appeals decision of his direct appeal in *State v. Ellis*, 8th Dist. Cuyahoga No. 99803, 2014-Ohio-116, following his bench-trial conviction for murder, involuntary manslaughter, two counts of felonious assault, and aggravated riot along with the each offense’s firearm specification. The Court affirmed Relator’s convictions and sentences in all respects with the exception of the aggravated riot conviction, which the Court vacated due to insufficient evidence. The last paragraph of the Court’s decision states:

Judgment affirmed in part, reversed in part, and remanded to the trial court to vacate Ellis's conviction for aggravated riot.

It is ordered that appellee and appellant share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. Case remanded to the trial court for actions consistent with this opinion.

State v. Ellis, 8th Dist. Cuyahoga No. 99830, 2014-Ohio-116 (*Ellis I*), ¶ 63, *cause dismissed*, 139 Ohio St.3d 1423, 2014-Ohio-2595, 10 N.E.3d 741, ¶ 63.

{¶7} The assessment of Relator's claim also ends with two decisions from the Eighth District Court of Appeals wherein that Court addressed Relator's successive claims of his entitlement to a resentencing hearing. In *State v. Ellis*, 8th Dist. Cuyahoga No. 101603, 2015-Ohio-1642, the Court noted the trial court had merged all of Relator's convictions for purposes of sentencing, leaving his total sentence unchanged. Therefore, the Court observed, Relator benefited from his acquittal on the aggravated riot conviction in that he is left with one fewer conviction. *Id.* at ¶ 12. Therefore, the Court found the trial court's correction of Relator's judgment entry of conviction and sentence pursuant to its decision in *Ellis I* outside of Relator's presence did not constitute error under those circumstances. *Id.* The Court likened its mandate to the trial court in *Ellis I* as ministerial in nature and did not require a resentencing hearing. *Id.* at ¶ 13.

{¶8} In *State ex rel. Ellis v. Burnside*, 8th Dist. Cuyahoga No. 103469, 2015-Ohio-5432, wherein Relator re-presented the same "resentencing" claim he is presenting here, the Court found Relator's claim barred by the doctrine of res judicata, referring to its own previous decision on the matter and reiterating:

It must also be noted that requiring *Ellis* to be conveyed to the trial court would constitute a vain act because no resentencing was required. *State ex rel. Strothers v. Turner*, 79 Ohio St.3d 272, 1997-Ohio-154, 680 N.E.2d 1238. The trial court was simply required to discharge a ministerial act by vacating a conviction as ordered in *State v. Ellis*, 8th Dist. Cuyahoga No. 99830, 2014-Ohio-116.

State ex rel. Ellis v. Burnside, 8th Dist. Cuyahoga No. 103469, 2015-Ohio-5432, ¶ 7.

{¶9} In short, because Relator has already availed himself of an adequate remedy in the ordinary course of law and the doctrine of res judicata precludes the claim he is presently bringing before this Court, we find no basis upon which a writ could issue. Accordingly, the Court sustains each Respondent's respective motion to dismiss and dismisses Relator's original action seeking a writ of mandamus/procedendo. The Court overrules as moot all pending and as-yet ruled upon pleadings Relator has filed on his own behalf in this case subsequent to the filing of this original action.

{¶10} Final order. Clerk to service notice as provided by the Rules of Civil Procedure. Costs taxed to Relator.

JUDGE GENE DONOFRIO

JUDGE CHERYL L. WAITE

JUDGE DAVID A. D'APOLITO