

OPINIONS OF THE SUPREME COURT OF OHIO

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The State ex rel. White, Appellant, v. Enright, Clerk of Court, et al., Appellees.

[Cite as State ex rel. White v. Enright (1992), Ohio St.3d .]

Mandamus to obtain copies of relator's criminal file -- Action dismissed for want of prosecution when relator ignores two notices from court to file his brief.

(No. 92-1552 -- Submitted November 10, 1992 -- Decided December 11, 1992.)

Appeal from the Court of Appeals for Franklin County, No. 91AP-11.

Appellant, Arliss White, brought this action in mandamus to compel appellees, the Franklin County Clerk of the Court of Common Pleas, Criminal Division, and the Franklin County Prosecuting Attorney, to permit appellant "to obtain copies of his criminal file to-wit: Police Reports, Witnesses Statements, Discovery etc. * * *." Appellees filed a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim on which relief can be granted, which the court converted into a motion for summary judgment. After a hearing, the court of appeals granted summary judgment as to the clerk of courts, but denied the motion with respect to the prosecuting attorney.

Thereafter, the prosecuting attorney filed an answer to the complaint. By journal entry filed July 29, 1991, the court of appeals ordered that the prosecuting attorney submit the subject records to the court under seal, that evidence and appellant's brief be filed by August 2, 1991, and that the prosecuting attorney's brief be filed within fifteen days thereafter. On August 2, 1991, the prosecuting attorney filed the documents under seal and proposed stipulations, but appellant filed no brief. On October 11, 1991, the assignment commissioner of the court advised appellant by letter that unless within seven days he filed an application to file out of rule, an affidavit showing good cause for failure to proceed, and his brief, the case would be submitted to the court for disposition under Civ.R. 41(B)(1) (failure to prosecute).

Appellant filed no brief, and by entry filed October 15, 1991, the court of appeals dismissed the case for want of

prosecution. On October 28, 1991, appellant filed a motion for reconsideration, which the court overruled on December 17, 1991.

The cause is before this court upon an appeal as of right.

Arliss White, pro se.

Per Curiam. The judgment of the court of appeals is affirmed. Appellant ignored two notices from the court of appeals to file his brief, and ignored the first notice for more than two months. We find no abuse of discretion in the court's dismissal of the action for want of prosecution under these facts.

Judgment affirmed.

Moyer, C.J., Sweeney, Holmes, Douglas, Wright, H. Brown and Resnick, JJ., concur.