

[Cite as *State ex rel. Wartenbe v. Ohio Adult Parole Auth.*, 2004-Ohio-3937.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Robert Wartenbe,	:	
Relator,	:	
v.	:	No. 03AP-922
Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
Respondent.	:	

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D E C I S I O N

Rendered on July 27, 2004

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*Robert Wartenbe, pro se.*

*Jim Petro, Attorney General, and Scott M. Campbell, for  
respondent.*

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IN MANDAMUS  
ON OBJECTIONS TO MAGISTRATE'S DECISION

LAZARUS, P.J.

{¶1} Relator, Robert Wartenbe, has filed this original action in mandamus requesting this court to issue a writ of mandamus against respondent, Ohio Adult Parole Authority, to order it to comply with a plea bargain agreement he entered into at the time of his sentencing.

{¶2} Pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate who issued a decision including findings of fact and conclusions of law. (Attached as Appendix A.) In that decision, the magistrate determined that this court should sua sponte dismiss this action on the grounds that relator has failed to comply with the mandatory requirements of R.C. 2969.25(C). The magistrate found that relator failed to file the affidavit required by that section of an inmate who seeks waiver of prepayment of the filing fees in a civil action.

{¶3} Relator filed objections to the decision of the magistrate arguing that the record herein reveals that relator was not seeking to proceed in forma pauperis. At the time he filed his action, he paid \$40 believing that was more than sufficient to cover the filing costs. He subsequently paid an additional \$60 to cover the balance.

{¶4} We find the objection to the magistrate's decision to be well-taken and sustain it. At the time he filed this action, relator made a good-faith effort to pay necessary filing fees and did comply with the requirements of R.C. 2969.25(A) which have been found to be jurisdictional, namely the affidavit detailing other litigation.

{¶5} Following independent review, we reject the magistrate's conclusions of law and re-reference this matter to the magistrate for consideration on the merits.

*Objections sustained; matter  
re-referenced to magistrate for  
consideration of the merits.*

BROWN and SADLER, JJ., concur.

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**APPENDIX A**

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Robert Wartenbe,	:	
	:	
Relator,	:	
v.	:	No. 03AP-922
Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
	:	
Respondent.	:	

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MAGISTRATE'S DECISION

Rendered on January 29, 2004

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*Robert Wartenbe, pro se.*

*Jim Petro, Attorney General, and Scott M. Campbell, for respondent.*

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IN MANDAMUS  
ON SUA SPONTE DISMISSAL

{¶6} In this original action, relator, Robert Wartenbe, an inmate of the Mansfield Correctional Institution, requests that a writ of mandamus issue against respondent Ohio Adult Parole Authority.

Findings of Fact:

{¶7} 1. On September 18, 2003, relator, an inmate of the Mansfield Correctional Institution, filed this original action against a government entity, naming the Ohio Adult Parole Authority as respondent.

{¶8} 2. On the date this action was filed, relator tendered a check in the amount of \$40 to be applied toward the filing fees required for this original action. However, Loc.R. 12(B) requires the relator to deposit with the clerk of this court the sum of \$100 as security for the payment of costs.

{¶9} 3. Relator has failed to file a motion for leave to proceed in forma pauperis supported by an affidavit showing indigency as provided by Loc.R. 12(B).

{¶10} 4. Relator has failed to file the affidavit required by R.C. 2969.25(C). In that regard, relator has failed to file a statement of the amount in his inmate account for the preceding six months, as certified by the institutional cashier. Relator has also failed to file a statement of all other cash and things of value owned by him.

Conclusions of Law:

{¶11} It is the magistrate's decision that this court sua sponte dismiss this action on grounds that relator has failed to comply with the mandatory requirements set forth at R.C. 2969.25(C).

{¶12} Under R.C. 2969.25(C), an inmate who seeks waiver of prepayment of the filing fees in a civil action brought against a government entity or employee, must file an affidavit that includes: (1) a statement of the amount in his inmate account for the

preceding six months, as certified by the institutional cashier; and (2) a statement of all other cash and things of value owned by the inmate.

{¶13} Compliance with the provisions of R.C. 2969.25 is mandatory and failure to satisfy the statutory requirements is grounds for dismissal of this action. *State ex rel. Washington v. Ohio Adult Parole Auth.* (1999), 87 Ohio St.3d 258; *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421; *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285.

{¶14} Relator's failure to comply with the mandatory requirements of R.C. 2969.25(C) is grounds for dismissal of the instant mandamus action.

{¶15} Accordingly, it is the magistrate's decision that this court sua sponte dismiss this action.

/s/Kenneth W. Macke  
KENNETH W. MACKE  
MAGISTRATE