

Rel: June 26, 2020

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

---

2190584

---

**Ex parte James McConico, Jr.**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: James McConico, Jr.**

**v.**

**Sharon Brown et al.)**

**(Elmore Circuit Court, CV-20-20)**

PER CURIAM.

James McConico, Jr., an inmate at Fountain Correctional Facility, petitions this court for a writ of mandamus

2190584

directing the Elmore Circuit Court ("the trial court") to employ a different standard for purposes of evaluating his indigent status.

The materials before this court indicate the following. On March 5, 2020, Elmore Circuit Judge Ben A. Fuller entered an order denying McConico's request for a waiver of the required filing fee in a civil action McConico had filed against Sharon Brown, Warden Walter Myers, "Facebook Headquarters," and T-Mobile Corp. In the order, the trial court did not provide an explanation for its decision. A copy of the complaint is not included in the materials submitted to this court, nor is McConico's affidavit of substantial hardship that was filed in the trial court in connection with that action. Instead, in support of his mandamus petition, McConico has submitted an "example" affidavit dated April 8, 2020, which, we note, is dated after the trial court denied his request for a waiver of the filing fee. Similarly, the record of the amount of money in McConico's prison account that McConico has submitted in support of his mandamus petition was also sworn to and notarized after the request for a waiver was denied.

2190584

Therefore, the trial court could not have had the affidavit and prison-account record that were submitted to this court before it when it entered the order at issue. Thus, the only document we can consider in reviewing this petition is the trial court's order of March 5, 2020. Ex parte K.A.S., 197 So. 3d 503, 507 (Ala. Civ. App. 2015) ("[I]n a mandamus proceeding, this Court will not consider evidence not presented to the trial court." Ex parte Cincinnati Ins. Co., 51 So. 3d 298, 310 (Ala. 2010)."); see also Rule 21(a)(1)(F), Ala. R. App. P.

"This Court has consistently held that the writ of mandamus is an extraordinary and drastic writ and that a party seeking such a writ must meet certain criteria. We will issue the writ of mandamus only when (1) the petitioner has a clear legal right to the relief sought; (2) the respondent has an imperative duty to perform and has refused to do so; (3) the petitioner has no other adequate remedy; and (4) this Court's jurisdiction is properly invoked. Ex parte Mercury Fin. Corp., 715 So. 2d 196, 198 (Ala. 1997). Because mandamus is an extraordinary remedy, the standard by which this Court reviews a petition for the writ of mandamus is to determine whether the trial court has clearly abused its discretion. See Ex parte Rudolph, 515 So. 2d 704, 706 (Ala. 1987)."

2190584

"Ex parte Flint Constr. Co., 775 So. 2d [805,] 808 [(Ala. 2000)]."

Ex parte Alabama Dep't of Human Res., 227 So. 3d 519, 521 (Ala. Civ. App. 2017).

Rule 21(a)(1) provides, in part:

"(1) General. Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefor with the clerk of the appellate court having jurisdiction thereof with certificate of service on the respondent judge or judges and on all parties to the action in the trial court. The petition shall contain, under appropriate headings and in the order here indicated:

"....

"(F) Appendix. An appendix including copies of any order or opinion or parts of the record that would be essential to an understanding of the matters set forth in the petition. ..."<sup>1</sup>

In Ex parte Veteto, 230 So. 3d 401, 403-04 (Ala. Civ. App. 2017), this court stated:

"This court has held that petitions for the writ of mandamus that do not comply with Rule 21(a)(1)(E) [now Rule 21(a)(1)(F), see note 1, supra] by failing to include certain materials, such as court orders and other parts of the record essential to our

---

<sup>1</sup>Rule 21(a)(1), Ala. R. App. P., was amended effective April 1, 2020, to add the requirement that a statement of the case be included in a petition for a writ of mandamus. Therefore, the language that now appears in Rule 21(a)(1)(F) formerly appeared in Rule 21(a)(1)(E), Ala. R. App. P.

2190584

consideration of the request for relief, are due to be dismissed. Ex parte Strickland, 172 So. 3d 857, 860 (Ala. Civ. App. 2014). Without such materials this court is unable to conduct a meaningful review or to grant the relief sought in the petition. In other words, without providing this court with such materials, a petitioner is unable to demonstrate that he or she has a clear legal right to the relief requested."

In this case, McConico has failed to provide this court with sufficient materials for us to determine whether the trial court applied the proper standard in denying his request for a waiver of the filing fee. Based on what is before this court, we conclude that McConico has failed to demonstrate that he has a clear legal right to the relief he requests in his petition. Accordingly, the petition is due to be dismissed.

PETITION DISMISSED.

Thompson, P.J., and Moore, Donaldson, Edwards, and Hanson, JJ., concur.