

ARKANSAS SUPREME COURT

No. CR 08-333

PATRICK L. SHERMAN
Petitioner

v.

ROBERT H. WYATT, JR., CIRCUIT
JUDGE
Respondent

Opinion Delivered May 29, 2008

PRO SE MOTION AND AMENDED
MOTION FOR RECONSIDERATION
OF MOTION FOR RULE ON CLERK
TO FILE PETITION FOR WRIT OF
MANDAMUS [CIRCUIT COURT OF
JEFFERSON COUNTY, NO.
UNKNOWN]

MOTION AND AMENDED MOTION
DENIED.

PER CURIAM

On February 6, 2008, petitioner Patrick L. Sherman tendered to this court a petition for writ of mandamus in which he sought a writ compelling Circuit Judge Robert H. Wyatt, Jr., to provide him with a filemarked copy of a petition for writ of habeas corpus tendered to the circuit court on January 24, 2008. As the mandamus petition was received without a filing fee or a certified record of the lower court proceedings, it was returned to him with a letter explaining the need to return the petition with the record and the filing fee or a motion to proceed in forma pauperis.

On February 21, 2008, petitioner submitted a second mandamus petition with an affidavit of indigency. There was no prayer for relief at the close of the petition, but it pertained to allegations that Judge Wyatt had failed “to file” the petition for writ of habeas corpus and failed to perform other duties. The petition sought money damages as well as a writ of mandamus compelling the respondent judge to take certain action. The second mandamus petition was

tendered, and petitioner was again advised of the need to submit a record of the lower court proceedings.

Petitioner subsequently filed a motion for rule on clerk, asking that this court direct that the second mandamus petition be filed.¹ He also asked that a hearing be held at this court so that he could present evidence. The motion was denied. *Sherman v. Wyatt*, CR 08-333 (Ark. Apr. 24, 2008) (per curiam).

On May 7, 2008, petitioner tendered another pro se petition for writ of mandamus. Because it largely pertained to the same claims raised in the prior mandamus petitions tendered to this court and because it was tendered without a certified record of any lower court proceedings, it was filed as a motion for reconsideration of the motion for rule on clerk. He later filed an amendment to the motion in the form of seven affidavits in which he essentially repeats the claims raised in the motion. The motion and amended motion are now before us.

Petitioner again contends that Judge Wyatt has refused to file a motion related to the petition for writ of habeas corpus tendered to the circuit court on January 24, 2008. He reiterates his argument that Judge Wyatt was wrong in refusing to order the habeas petition to be filed and in not forwarding a copy of it to him. Petitioner repeats his claim that he is entitled to money damages from Judge Wyatt on the ground that the habeas petition was meritorious and thus the writ should have been issued.

Petitioner also argues that this court erred in declaring that a certified record of the lower

¹The motion for rule on clerk was assigned to our docket as a criminal matter because petitioner placed the docket number of one of his criminal convictions in Clark County on both the first and second mandamus petitions tendered to this court. It appeared, however, that the petition for writ of habeas corpus tendered to the Circuit Court of Jefferson County, which primarily formed the basis of petitioner's dissatisfaction with Judge Wyatt and others expressed in the second mandamus petition, may have been a civil matter.

court proceedings was required to file a mandamus action because a certified copy of the judgment of conviction in his criminal case was sufficient to file a habeas petition. Further, he alleges that, if a certified record was needed to file the mandamus petition here, it was the responsibility of the respondent to the habeas petition to provide the record. He concludes that he is illegally detained in the Arkansas Department of Correction and this court should issue a writ of habeas corpus to effect his release from custody.

It appears that petitioner has misunderstood certain procedural rules. When he tendered the petition for writ of mandamus to this court contending that the respondent circuit judge had failed to perform some duty, it was his obligation as the petitioner to produce a record of the proceedings in accordance with our Rule 6-1(a) to substantiate his claim. Ark. Sup. Ct. R. 6-1(a). In cases in which the jurisdiction of this court is in fact appellate, although in form original, such as petitions for writs of prohibition, certiorari, or mandamus, the pleadings with certified exhibits from the trial court are treated as the record. *Jackson v. Tucker*, 325 Ark. 318, 927 S.W.2d 336 (1996). Even where a petitioner asserts that he is unable to submit a certified record because he has either been denied the record by the circuit clerk or others or because he was never allowed to file his pleadings, the fact remains that without some certified record, there is no basis on which this court can assume jurisdiction of a matter.

It may be that petitioner's complaint lies with the procedure employed by the circuit court to docket pleadings tendered to it. If so, a mandamus action filed directly in this court is not the proper remedy to challenge the procedure.

Motion and amended motion denied.