

[Cite as *Strzala v. O'Donnell*, 2004-Ohio-4464.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84667

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|--------------------------|---|-----------------|
| RONALD STRZALA | : | ORIGINAL ACTION |
| | : | |
| | : | JOURNAL ENTRY |
| Relator | : | AND |
| | : | OPINION |
| vs. | : | |
| | : | |
| JOHN P. O'DONNELL, JUDGE | : | |
| | : | |
| Respondent | : | |

DATE OF JOURNALIZATION: AUGUST 23, 2004

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Dismissed.
Motion No. 361581

APPEARANCES:

For Relator: RONALD STRZALA, pro se
Inmate No. #377-964
Lake Erie Correctional Inst.
501 Thompson Avenue
Conneaut, Ohio 44030

For Respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: JON W. OEBKER
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA A. BLACKMON, P.J.

{¶1} Ronald Strzala has file a complaint for a writ of mandamus through which he seeks an order from this court which requires Judge John P. O'Donnell to vacate the conviction and sentence of incarceration imposed in *State v. Strzala*, Cuyahoga County Court of Common Pleas Case No. CR-374310. Judge O'Donnell has filed a motion to dismiss which we grant for the following reasons.

{¶2} Initially, we find that Strzala's complaint for a writ of mandamus is defective since it is improperly captioned. A complaint for a writ of mandamus must be brought in the name of the state, on relation of the person applying. The failure of Strzala to properly caption his complaint for a writ of mandamus warrants dismissal. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Judge Cleary* (Jan. 11. 2001), Cuyahoga App. No. 78763. In addition, Strzala has failed to comply with R.C. 2969.25 which requires the attachment of an affidavit to the complaint for a writ of mandamus that describes each civil action or appeal filed within the previous five years in any state or federal court. Strzala's failure to comply with R.C. 2969.25 also warrants the dismissal of the complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

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{¶3} Finally, before this court is permitted to issue a writ of mandamus, Strzala must demonstrate the following: (1) Strzala possesses a clear legal right to the requested relief; (2) Judge O'Donnell possesses a clear legal duty to perform the requested relief; and (3) there exists no adequate remedy in the ordinary course of the law. *State ex rel. Manson v. Morris* (1993), 66 Ohio St.3d 440, 613 N.E.2d 232. Herein, Strzala has failed to establish that he possesses any legal right which requires Judge O'Donnell to vacate the conviction and sentence of incarceration as imposed in *State v. Strzala*, supra. In addition, Strzala has failed to establish that he does not possess an adequate remedy at law vis-a-vis a direct appeal of his conviction and sentence. Thus, Strzala's request for a writ of mandamus must fail.

{¶4} Accordingly, we grant Judge O'Donnell's motion to dismiss. Strzala's complaint for a writ of mandamus is dismissed. Costs to Strzala. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as mandated by Civ.R. 58(B).

Complaint dismissed.

PATRICIA A. BLACKMON
PRESIDING JUDGE

ANNE L. KILBANE, J., CONCURS

KENNETH A. ROCCO, J., CONCURS

