

[Cite as *Gallagher v. Padgett*, 2007-Ohio-4579.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90203

JUDGE EILEEN A. GALLAGHER

RESPONDENT

vs.

HOMER PADGETT

RELATOR

**JUDGMENT:
COMPLAINT DENIED**

WRIT OF MANDAMUS
MOTION NO. 399912
ORDER NO. 400346

RELEASE DATE:

FOR RELATOR:

Homer Padgett, pro se
Inmate No. 344-628

Lake Erie Correctional Inst.
P.O. Box 8000
Conneaut, Ohio 44030

ATTORNEY FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor
By: Diane Smilanick
Asst. County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

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JUDGE CHRISTINE T. MCMONAGLE:

{¶ 1} Homer Padgett has filed a complaint for a writ of mandamus. Padgett seeks an order from this court which requires Judge Eileen A. Gallagher to render a ruling with regard to a motion for pre-conviction jail time credit that was filed in the underlying case of *State v. Padgett*, Cuyahoga County Court of Common Pleas Case No. CR-344458. Judge Gallagher has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} Initially, we find that Padgett's complaint for a writ of mandamus is defective, since it is improperly captioned. The complaint for a writ of mandamus must be brought in the name of the state on relation of the person applying. R.C. 2731.04; *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Gannon v. Gallagher* (1945), 145 Ohio St. 170, 60 N.E.2d 666.

{¶ 3} In addition, Padgett's request for a writ of mandamus is moot. Attached to the motion for summary judgment is a copy of a judgment entry, as journalized on August 6, 2007, which demonstrates that Padgett has been granted pre-conviction jail time credit in the amount of one hundred and ninety-six days. Thus, Padgett's request for a writ of mandamus is moot. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 278, 658 N.E.2d 723; *State ex rel. Snider v. Stapleton* (1992), 65 Ohio St.3d 40, 600 N.E.2d 240; *State ex rel. Richard v. Wells* (1992), 64 Ohio St.3d 76, 591 N.E.2d 1240; *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163.

{¶ 4} Accordingly, we grant Judge Gallagher's motion for summary judgment. Costs to Judge Gallagher. It is further ordered that the Clerk of the Eighth District Court of Appeals, as required by Civ. R. 58(B), serve notice of this judgment and date of entry upon all parties.

Complaint denied.

CHRISTINE T. MCMONAGLE, JUDGE

SEAN C. GALLAGHER, P.J., and
ANTHONY O. CALABRESE, JR., J., CONCUR