

[Cite as *State v. Bogan*, 2008-Ohio-3797.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 91657

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**STATE OF OHIO**

RELATOR

vs.

**CLARENCE BOGAN, III**

RESPONDENT

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**JUDGMENT:  
COMPLAINT DISMISSED**

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WRIT OF MANDAMUS  
MOTION NO. 410930  
ORDER NO. 411404

**RELEASE DATE:** July 25, 2008

[Cite as *State v. Bogan*, 2008-Ohio-3797.]

**FOR RELATOR:**

Clarence Bogan, III, pro se  
Cuyahoga County Jail  
P.O. Box 5600  
Cleveland, Ohio 44101

**ATTORNEYS FOR RESPONDENT:**

William D. Mason  
Cuyahoga County Prosecutor

By: Diane Smilanick  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

[Cite as *State v. Bogan*, 2008-Ohio-3797.]  
KENNETH A. ROCCO, P.J.:

{¶ 1} Clarence Bogan, III, the relator, has filed a complaint for a writ of mandamus, through which he seeks dismissal of three criminal cases that are pending within the Cuyahoga County Court of Common Pleas.<sup>1</sup> Judge Jose A. Villanueva, the respondent, has filed a motion to dismiss, which we grant for the following reasons.

{¶ 2} Initially, we find that Bogan'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 Bogan to properly caption his complaint for a writ of mandamus warrants dismissal. R.C. 2731.04; *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382; *Gannon v. Gallagher* (1945) 145 Ohio St. 170; 60 N.E.2d 666; *Dunning v. Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

{¶ 3} Bogan has also 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. Bogan's failure to comply with R.C. 2969.25 requires the dismissal of his complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Bd.*, 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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<sup>1</sup>*State v. Bogan, III*, Cuyahoga County Court of Common Pleas Case Nos. CR-499835, 500295, and 501850.

{¶ 4} It must also be noted that Bogan has failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint for a writ of mandamus be supported by a sworn affidavit that specifies the details of his claim. The failure of Bogan to comply with the supporting affidavit requirement of Loc.App.R. 45(B)(1)(a) requires the dismissal of his complaint for a writ of mandamus. *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 5} Finally, we find that Bogan has failed to establish that he is entitled to a writ of mandamus. In order for this court to issue a writ of mandamus, Bogan must establish that: (1) he possesses a clear right to a dismissal of the three underlying criminal cases; (2) Judge Villanueva possesses a clear legal duty to dismiss the three underlying criminal cases; and (3) there exists no other adequate remedy in the ordinary course of the law. Herein, Bogan argues, inter alia, that the following issues require dismissal of his three pending criminal cases: (1) violation of Miranda rights; (2) violation of Fourth Amendment rights; (3) excessive bond; (4) denial of access to telephone or mail; (5) failure of prosecutor to comply with discovery orders; (6) prosecutor has withheld discovery; (7) invasion of privacy; (8) violation of attorney-client privilege; (9) denial of right to due process and equal protection; and (10) denial of right to a speedy trial.

{¶ 6} Bogan, through his complaint for a writ of mandamus, has failed to establish that he possesses a clear right to a dismissal of the three pending criminal cases or that Judge

Villanueva possesses any legal duty to dismiss the three pending criminal cases through the aforesaid ten issues. Cf. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914; *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119. In addition, Bogan possesses an adequate remedy at law vis-a-vis an appeal, once the underlying criminal cases have been concluded. *State ex rel. Ferguson v. Court of Claims of Ohio, Victims of Crime Div.*, 98 Ohio St.3d 399, 2003-Ohio-1631, 786 N.E.2d 43; *State ex rel. Hastings Mut. Ins. Co. v. Merillat* (1990), 50 Ohio St.3d 152, 553 N.E.2d 646.

{¶ 7} Accordingly, we grant Judge Villanueva's motion to dismiss. Costs to Bogan. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Complaint dismissed.

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KENNETH A. ROCCO, PRESIDING JUDGE

CHRISTINE T. MCMONAGLE, J., and  
ANN DYKE, J., CONCUR