

[Cite as *State ex rel. Stadmire v. Kilbane-Koch*, 2009-Ohio-3747.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93578

**STATE OF OHIO, EX REL.,
RICHARD L. STADMIRE**

RELATOR

vs.

JUDGE JUDITH KILBANE-KOCH

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
ORDER NO. 424143

RELEASE DATE: July 29, 2009

FOR RELATOR

Richard L. Stadmire, pro se
Inmate No. 424-953
Toledo Correctional Institution
2001 East Central Avenue
Toledo, Ohio 43608

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MELODY J. STEWART, J.:

{¶ 1} On July 6, 2009, the relator, Richard Stadmire, commenced this mandamus action against the respondent, Judge Kilbane-Koch, to compel the judge to issue findings of fact and conclusions of law for a postconviction relief petition which Stadmire filed in the underlying case, *State v. Stadmire*, Cuyahoga County Common Pleas Court Case No. CR-461538, on September 19, 2008.¹ For the following reasons, this court, sua sponte, denies the application for a writ of mandamus.

{¶ 2} In June 2006, a jury found Stadmire guilty of kidnapping, aggravated robbery, and two counts of rape with three-year firearm specifications. On August

¹ In his petition Stadmire alleges he filed the postconviction relief petition on

23, 2006, the court sentenced him to forty-three years in prison. Stadmire timely appealed, and the record was filed on October 23, 2006. This court affirmed. *State v. Stadmire*, Cuyahoga App. No. 88735, 2007-Ohio-3644. On September 19, 2008, Stadmire filed the subject postconviction relief petition. On December 3, 2008, the trial court denied the petition without findings of fact and conclusions of law. This mandamus action followed.

{¶ 3} Subsection (A)(2) of R.C. 2953.21, the postconviction petition statute, provides in pertinent part as follows: “a petition under division (A)(1) of this section shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction ***.” In the instant case Stadmire filed his postconviction relief petition approximately twenty-three months after the transcript had been filed with this court in the direct appeal. Thus, the petition was untimely on its face. Furthermore, R.C. 2953.23(A) provides in pertinent part that “a court may not entertain a petition filed after the expiration of the period prescribed in division (A)” of R.C. 2953.21.

{¶ 4} The Supreme Court of Ohio has held that a trial court has no duty to issue findings of fact and conclusions of law when it dismisses an untimely postconviction relief petition. *State ex rel. James v. Coyne*, 114 Ohio St.3d 45, 2007-Ohio-2716, 867 N.E.2d 837; *State ex rel. Ashipa v. Kubicki*, 114 Ohio St.3d 459, 2007-Ohio-4563, 872 N.E.2d 1235; *State ex rel. Hach v. Summit County Court*

September 22, 2009. The docket for the underlying case states September 19, 2008.

of *Common Pleas*, 102 Ohio St.3d 75; 2004-Ohio-1800, 806 N.E.2d 554; *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459; and *State ex rel. Kimbrough v. Greene*, 98 Ohio St.3d 116, 2002-Ohio-7042, 781 N.E.2d 155. Therefore, mandamus will not lie to compel a judge to issue findings of fact and conclusions of law for an untimely filed postconviction relief petition.²

{¶ 5} The relator has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the relator within the previous five years in any state or federal court. The relator's failure to comply with R.C. 2969.25 warrants 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 and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. Relator also did not comply with R.C. 2969.25(C) which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. This also is sufficient reason to deny the mandamus, deny indigency status, and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842 and *State ex rel. Hunter v. Cuyahoga County Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420.

² Stadmire's postconviction relief petition argues that the indictments were deficient for failing to state a mens rea, pursuant to *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917. This argument does not come within the timeliness exception under R.C. 2953.23(A)(1) and (2).

{¶ 6} Accordingly, this court denies the application for a writ of mandamus. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

MELODY J. STEWART, JUDGE

PATRICIA A. BLACKMON, P.J., and
LARRY A. JONES, J., CONCUR