

[Cite as *State v. Byrge*, 2009-Ohio-4376.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92979

EX REL., STATE OF OHIO

RELATOR

vs.

EX REL., THOMAS BYRGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 420391
ORDER NO. 424772

RELEASE DATE: August 24, 2009

FOR RELATOR

Thomas Byrge, pro se
Inmate No. 510-744
Grafton Correctional Camp
1800 South Avon Belden Road
Grafton, Ohio 44044

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

BY: James E. Moss
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Thomas Byrge filed this action and is the defendant in *State v. Byrge*, Cuyahoga County Court of Common Pleas Case No. CR-480474. In the caption of the complaint, Byrge did not identify himself as the relator, failed to identify a respondent, and failed to provide an address for the respondent. Byrge's failure to include the names and addresses of *all* the parties in the caption, as required by Civ.R. 10(A), may be grounds for dismissing this action. *State ex rel. Hall v. Calabrese* (Aug. 16, 2001), Cuyahoga App. No. 79810, at 2. For purposes of disposing of this action, this court will treat Byrge as relator and

Judge Timothy J. McGinty, the judge presiding over Case No. CR-480474, as respondent.

{¶ 2} Initially, we observe that Byrge's claims and the nature of the relief which he requests in his complaint are difficult to discern. If a relator has failed to present clearly the claims asserted and the relief requested, this court may enter judgment against the relator. See, e.g., *State ex rel. Moore v. Ohio Adult Parole Auth.*, Cuyahoga App. No. 81757, 2003-Ohio-1844; *State ex rel. Drake v. Sutula* (Apr. 29, 1999), Cuyahoga App. No. 75999; *State ex rel. Delgado v. Court of Common Pleas Cuyahoga Cty.* (Feb. 5, 1998), Cuyahoga App. No. 73341. The lack of clarity in the complaint provides a sufficient basis for this court to deny Byrge's request for relief in mandamus.

{¶ 3} From what the court can discern, Byrge complains that respondent imposed a sentence in excess of that which Byrge understood to be the sentence under his plea agreement. He requests that this court compel respondent to vacate the portion of his sentence which is in excess of what Byrge claims was part of his plea.

{¶ 4} The fundamental criteria for issuing a writ of mandamus are well-established. "In order to be entitled to a writ of mandamus, relator must show (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel.*

National City Bank v. Bd. of Education (1977), 52 Ohio St.2d 81, 369 N.E.2d 1200.” *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 42, 374 N.E.2d 641. Of course, all three of these requirements must be met in order for mandamus to lie.

{¶ 5} In *Caldwell v. State*, Cuyahoga App. No. 91880, 2008-Ohio-5098, the relator contended that he was entitled to release from prison after serving the term of years to which he said he agreed as part of his plea agreement. This court granted a motion for summary judgment filed by the court of common pleas and held that: Caldwell did not have a clear legal right to judicial release based upon an alleged plea agreement; the court of common pleas did not have a clear legal duty to grant him judicial release; and Caldwell had an adequate remedy by way of a delayed appeal. Similarly, in *Mauer v. Cuyahoga Cty. Court of Common Pleas*, Cuyahoga App. No. 89858, 2007-Ohio-3641, the relator requested that this court “command” the court of common pleas to “honor” his plea agreement and release him accordingly. This court held that “Mauer has or had an adequate remedy in the ordinary course of the law by filing a motion to withdraw his guilty plea under Crim.R. 32.1.” *Id.* at ¶7.

{¶ 6} Likewise in this action, Byrge has not demonstrated that he has a clear legal right to relief or that respondent court has a clear legal duty. Additionally, “if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded.” (Citations deleted.) *State ex rel.*

Smith v. Fuerst, Cuyahoga App. No. 86118, 2005-Ohio-3829, at ¶4. As *Caldwell* and *Mauer* demonstrate, Byrge has or had various remedies. As a consequence, relief in mandamus is not appropriate.

{¶ 7} Accordingly, respondent's motion for summary judgment is granted. 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).

Writ denied.

FRANK D. CELEBREZZE, JR., JUDGE

**MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR**