

[Cite as *Brown v. Synenberg*, 2009-Ohio-5499.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93757

KAMERON G. BROWN

RELATOR

vs.

JUDGE JOAN SYNENBERG

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 425800
ORDER NO. 426802

RELEASE DATE: October 13, 2009

FOR RELATOR

Kameron G. Brown, pro se
Inmate No. A562-438
P.O. Box 901
Leavittsburg, Ohio 44430

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

ANN DYKE, J.:

{¶ 1} Relator, Kameron G. Brown, is the defendant in *State v. Brown*, Cuyahoga County Court of Common Pleas Case No. CR-518181, which has been assigned to respondent judge. Brown sent to the clerk what is captioned as “motion for relief from judgment pursuant to Civil Rule 60(B) and (5) order to show cause endorsed hereon.” The clerk filed this document as a complaint in an original action. We will treat Brown’s filing as a complaint in mandamus.

{¶ 2} The nature of the relief requested by Brown is difficult to discern. The failure of a plaintiff to state his claims clearly provides a basis for denying a request for relief in mandamus. See, e.g., *State v. Byrge*, Cuyahoga App. No.

92979, 2009-Ohio-4376, at ¶2. To the extent that we can discern the nature of relief requested by Brown, it appears that he is requesting that this court issue a writ of mandamus compelling respondent to vacate his guilty plea in Case No. CR-518181 because the trial court “breached” the plea agreement.

{¶ 3} The requirements for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Mandamus may compel a court to exercise judgment or discharge a function, but it may not control judicial discretion, even if that discretion is grossly abused. Additionally, mandamus is not a substitute for appeal and does not lie to correct errors and procedural irregularities in the course of a case. If the relator has or had an adequate remedy, relief in mandamus is precluded – regardless of whether the relator used the remedy. *State ex rel. Smith v. Fuerst*, Cuyahoga App. No. 86118, 2005-Ohio-3829, at ¶4.

{¶ 4} Respondent has filed a motion for summary judgment. Brown has not responded to the motion.

{¶ 5} The remedy for challenging a purported breach of a plea agreement is to file a motion to withdraw guilty plea under Crim.R. 32.1. See, e.g., *Mauer v. Cuyahoga Cty. Court of Common Pleas*, Cuyahoga App. No. 89858, 2007-Ohio-3641, at ¶6-7, citing *State ex rel. Rowe v. McCown*, 108 Ohio St.3d 183, 2006-Ohio-548, 842 N.E.2d 51. Although Brown states in the complaint in

this action that he sought to withdraw his guilty plea, a review of the docket in CR-518181 reflects that Brown has not filed a motion to withdraw guilty plea. Additionally, Brown has not provided this court with any controlling legal authority demonstrating that he has a clear legal right to the requested relief or that respondent has a clear legal duty to provide that relief. Brown has, therefore, failed to meet the standard for relief in mandamus.

{¶ 6} Brown's complaint and supporting documentation also are defective in ways that would require dismissal. He has not included the addresses of the parties in the caption as required by Civ.R. 10(A). *State ex rel. Hall v. Calabrese* (Aug. 16, 2001), Cuyahoga App. No. 79810, at 2.

{¶ 7} Brown "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. [Relator]'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." *State ex rel. Washington v. McMonagle*, Cuyahoga App. No. 91477, 2008-Ohio-3798, at 2. Also, he has failed to include a certified copy of the prison cashier's statement of the balance in his inmate account as required by R.C. 2969.25(C). *State ex rel.*

Bristow v. Sidoti (Dec. 1, 2000), Cuyahoga App. No. 78708, at 3-4. Likewise, in this action, we deny relator's claim of indigency and order him to pay costs.

{¶ 8} Furthermore, Loc.App.R. 45(B)(1)(a) requires that complaints in original actions be supported by an affidavit from the plaintiff or relator specifying the details of the claim. Brown has not filed an affidavit specifying the details of the claim. See, e.g., *State ex rel. Crosswhite v. McMonagle*, Cuyahoga App. No. 93130, 2009-Ohio-2697.

{¶ 9} 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.

ANN DYKE, JUDGE

SEAN C. GALLAGHER, P.J., and
MARY EILEEN KILBANE, J., CONCUR