

[Cite as *Leonard v. State*, 2009-Ohio-5971.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93872

CEDRIC F. LEONARD

RELATOR

vs.

STATE OF OHIO

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF PROCEDENDO
MOTION NO. 426549
ORDER NO. 427758

RELEASE DATE: November 6, 2009

FOR RELATOR

Cedric Leonard, pro se
Inmate No. 454-806
Grafton Correctional Inst.
2500 South Avon-Belden Rd.
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

MELODY J. STEWART, J.:

{¶ 1} On September 3, 2009, the relator, Cedric Leonard, commenced what he styled as a writ of procedendo to compel the Cuyahoga County Common Pleas Court to rule on and grant a motion for jail-time credit, which he filed in the underlying case, *State of Ohio v. Cedric Leonard*, Cuyahoga Cty. Common Pleas Court Case No. CR-440783 on February 9, 2009.¹ On September 22, 2009, the

¹ Leonard attached a copy of his motion to his petition. In the motion he asserted that he was continuously in jail from July 22, 2003 until November 24, 2003 and that this entitled him to 378 days of jail-time credit. He admitted in this motion, and the docket confirmed, that the trial court had already granted him 126 days of jail-time credit.

Cuyahoga County Prosecutor on behalf of the respondent² moved for summary judgment on the grounds of mootness. Attached to this dispositive motion was a certified copy of a journal entry in the underlying case file-stamped September 22, 2009, in which the judge granted Leonard's motion for a total of 127 days of jail-time credit. Leonard did not file a timely response. For the following reasons this court grants the respondent's motion for summary judgment and denies the writ.

{¶ 2} To the extent that Leonard seeks a ruling on his motion, the September 22, 2009 journal entry establishes that he has received his requested relief - a ruling on his motion for jail-time credit. To the extent that he sought to compel the judge to grant him 378 days of jail-time credit, he is asking for a writ of mandamus, as compared to a writ of procedendo, and his claim is ill-founded.

{¶ 3} The requisites 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. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Furthermore, mandamus is

² Leonard improperly captioned his writ action as "State of Ohio, Plaintiff-Respondent v. Cedric Leonard, Defendant-Petitioner." The prosecutor listed Judge Peter Corrigan, as the respondent.

not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Indus. Comm. of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus.

{¶ 4} A defendant, who is imprisoned, is entitled by law to have credited to his sentence of incarceration the number of days that he was confined prior to conviction and sentence. R.C. 2949.08; R.C. 2949.12; R.C. 2967.191; *State ex rel. Sanchez v. Cuyahoga Cty. Common Pleas Court* (May 22, 1997), Cuyahoga App. No. 72085. In addition a trial court has the clear legal duty to specify in the record of conviction and sentence the number of days a defendant was confined prior to conviction. Ohio Adm. Code 5120-2-04(B); *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, 786 N.E.2d 1286; *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 589 N.E.2d 113.

{¶ 5} In the present case the judge fulfilled this duty by specifying the number of days of jail-time credit in an entry. The granting of 127 days of credit was an exercise of discretion for which Leonard has or had an adequate remedy at law through appeal. *Rankin*, supra. Therefore, he cannot satisfy the requisites for mandamus, and this court denies his application for a writ.

{¶ 6} Additionally, Leonard failed to support his complaint with an affidavit “specifying the details of the claim” as required by Local Rule 45(B)(1)(a). *State*

ex rel. Wilson v. Calabrese (Jan. 18, 1996), Cuyahoga App. No. 70077; *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶ 7} The petition is also defective because it is improperly captioned. Leonard styled this petition as “State of Ohio v. Cedric Leonard.” R.C. 2731.04 requires that an application for a writ of mandamus “must be by petition, in the name of the state on the relation of the person applying.” The failure to caption the case correctly creates uncertainty as to the identity of the respondent. Additionally, Civ.R. 10(A) requires the caption of the complaint to state the addresses of all the parties. This court has held that these deficiencies warrant dismissal. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *State ex rel. Larry Calloway v. Court of Common Pleas of Cuyahoga Cty.* (Feb. 27, 1997), Cuyahoga App. No. 71699; *State ex rel. Samuels v. Municipal Court* (Nov. 22, 1994), Cuyahoga App. No. 67762; *State ex rel. White v. Villanueva* (Oct. 6, 1993), Cuyahoga App. No. 66009.

{¶ 8} 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 petitioner. *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 Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420.

{¶ 9} Accordingly, this court grants the motion for summary judgment and denies the writ. Respondent 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

KENNETH A. ROCCO, P.J., and
PATRICIA A. BLACKMON, J., CONCUR