

[Cite as *State ex rel. Spates v. Reid*, 2010-Ohio-3513.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94964

**STATE OF OHIO, EX REL.
JOSEPH SPATES**

RELATOR

vs.

ROBERT REID, SHERIFF

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 434592
Order No. 435290

RELEASE DATE: July 27, 2010

FOR RELATOR

Joseph Spates, pro se
#55486-060
FCI Elkton
Federal Correctional Institution
P.O. Box 10
Lisbon, Ohio 44432

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

MARY J. BOYLE, J.:

{¶ 1} Joseph Spates, the relator, has filed a complaint for a writ of mandamus. Spates seeks an order from this court, that requires Robert Reid, Sheriff of Cuyahoga County, the respondent, to remove a detainer that was lodged with the United States Marshal's Office on June 10, 2008. Sheriff Reid has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} Initially, we find that Spates has 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. Spates's failure to comply with R.C. 2969.25 warrants the dismissal of the 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. It must also be noted that Spates has failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that his complaint for a writ of mandamus be supported by an affidavit that specifies the details of the claim. *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.

{¶ 3} Finally, Spates has failed to establish that he is entitled to a writ of mandamus. In order for this court to issue a writ of mandamus, Spates must affirmatively establish each prong of the following three-part test: (1) Spates possesses a clear legal right to the requested relief; (2) Sheriff Reid possesses a clear legal duty; and (3) there exists no other adequate remedy in the ordinary exercise of the law. *State ex rel. Natl. City Bank v. Bd. of Edn.* (1977), 52 Ohio St.2d 81, 369 N.E.2d 1200; *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 374 N.E.2d 641. Moreover, mandamus is an extraordinary remedy which is to be exercised with great caution and granted only when the right is clear. Mandamus will not issue in doubtful cases. *State ex rel. Taylor v. Glasser*

(1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Connole v. Cleveland Bd. of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850.

{¶ 4} In the case sub judice, Spates's demand for the removal of the detainer is based upon the order of February 24, 2010, rendered in *State v. Spates*, Cuyahoga County Court of Common Pleas Case No. CR-07-502811-A, which provides that:

{¶ 5} "Defendant's motion for order of detainer removal is granted. Court notes that motion is unopposed by the state of Ohio, inasmuch as this court sentenced the defendant to a term of three years, to be served concurrently with sentence in Case No. 07-CR-00614-001, U.S.D.C. (N.D. Ohio), detainer is moot and thus ordered to be vacated forthwith."

{¶ 6} The trial court's order of February 24, 2010, however, was vacated on May 18, 2010, thus removing any duty on the part of Sheriff Reid to remove the detainer as sent to the United States Marshal's Office. See Exhibit "C" as attached to the motion for summary judgment. Thus, Spates has failed to establish that he is entitled to a writ of mandamus. *State ex rel. Peebles v. Anderson*, 73 Ohio St.3d 559, 1995-Ohio-335, 653 N.E.2d 371. Spates also possesses or possessed an adequate remedy at law, vis-a-vis an appeal from the order that vacated the detainer removal order of February 24, 2010. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108; *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.* (1990), 56

Ohio St.3d 33, 564 N.E.2d 86; *State ex rel. Provolone Pizza, LLC v. Callahan*,
Cuyahoga App. No. 88626, 2006-Ohio-660.

{¶ 7} Accordingly, we grant the motion for summary judgment. Costs to
Spates. 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).

Writ denied.

MARY J. BOYLE, JUDGE

CHRISTINE T. McMONAGLE, P.J., and
MELODY J. STEWART, J., CONCUR