

[Cite as *State v. Bogan*, 2017-Ohio-7080.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105747

STATE OF OHIO

RESPONDENT

vs.

CLARENCE BOGAN, III

RELATOR

**JUDGMENT:
WRIT DENIED**

Writ of Prohibition
Motion No. 507183
Order No. 508198

RELEASE DATE: August 2, 2017

FOR RELATOR

Clarence Bogan, III
Inmate No. 0102304
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., J.:

{¶1} Relator Clarence Bogan III commenced an action for a writ of prohibition asking this court “to prohibit the Cuyahoga County Court of Common Pleas from permitting” Assistant Prosecutors Daniel Cleary and Kelly Mason from proceeding in Bogan’s pending criminal trial. Bogan asserts that these prosecuting attorneys continue “to impede and deny discovery” in his case in contravention of Crim.R. 16, and therefore, the trial court must remove them from the case. Respondent Cuyahoga County Court of Common Pleas has moved for summary judgment on several grounds, including that the petition is defective and that the petition has no merit. We agree and grant respondent’s unopposed motion for summary judgment.

A. Facts

{¶2} In April 2016, Bogan was indicted in Cuyahoga C.P. No. CR-16-605087-A on four counts: aggravated murder, murder, felonious assault, and domestic violence. During the course of this case, which is still pending before the Cuyahoga County Common Pleas Court, Bogan, through counsel, filed requests for discovery. Cuyahoga County Assistant Prosecutors Daniel Cleary and Kelly Mason are the assistant prosecuting attorneys assigned to the case and have provided responses and supplemental responses to Bogan’s discovery requests. Dissatisfied with their discovery responses, Bogan commenced this action in May 2017, seeking a writ of prohibition to prohibit the trial court from permitting attorneys Cleary and Mason from prosecuting the case.

B. Writ of Prohibition Does Not Lie to Compel Removal of Attorneys for Alleged Discovery Violations

{¶3} To be entitled to a writ of prohibition, Bogan must establish that (1) the common pleas court exercised or is about to exercise judicial power, (2) the exercise of that power is unauthorized by law, and (3) denial of the writ will cause injury for which no other adequate remedy exists in the ordinary course of the law. *See State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 18. “[T]he function of a writ of prohibition is very limited; i.e., the sole purpose of such a writ is to stop an inferior court or judicial officer from engaging in any action which exceeds the general scope of its jurisdiction.” *State ex rel. Feathers v. Gansheimer*, 11th Dist. Ashtabula No. 2006-A-0038, 2007-Ohio-2858, ¶ 2. Prohibition generally “will not issue if the party seeking extraordinary relief has an adequate remedy in the ordinary course of law.” *State ex rel. Hemsley v. Unruh*, 128 Ohio St.3d 307, 2011-Ohio-226, 943 N.E.2d 1014, ¶ 9.

{¶4} Under R.C. 2931.03, the Cuyahoga County Court of Common Pleas has jurisdiction over Bogan’s criminal proceedings. *See State ex rel. Pruitt v. Donnelly*, 129 Ohio St.3d 498, 2011-Ohio-4203, 954 N.E.2d 117, ¶ 2. Bogan presents no facts or evidence even challenging the trial court’s jurisdiction. Indeed, in his petition, Bogan implicitly recognizes the trial court’s jurisdiction by essentially seeking an order compelling the trial court to remove prosecuting attorneys Cleary and Mason from the case. Here, Bogan’s claim is not cognizable through a complaint for a writ of prohibition. *See, e.g., State ex rel. Dailey v. Dawson*, Slip Opinion No.

2017-Ohio-1350, ¶ 14; *State ex rel. Plant v. Cosgrove*, 119 Ohio St.3d 264, 2008-Ohio-3838, 893 N.E.2d 485, ¶ 5 (recognizing that prohibition does not lie unless the respondent is patently and unambiguously without jurisdiction to act).

{¶5} Additionally, Bogan possesses adequate remedies in the ordinary course of the law that precludes an action for an extraordinary writ. To the extent that Bogan asserts that the prosecutors have failed to comply with Crim.R. 16 in the discovery process, he can file a motion to compel and, once the trial court rules on his motion, he may appeal. *See, e.g., State ex rel. Littlejohn v. Deters*, 148 Ohio St.3d 507, 2016-Ohio-7467, 71 N.E.3d 995, ¶ 7 (affirming denial of writ of mandamus because appellant “has an adequate remedy in the ordinary course of the law in that once the trial court rules on this motion for discovery and motions to compel discovery, he may appeal”). Similarly, Bogan may also file a motion to disqualify the attorneys and may appeal any adverse ruling. Thus, we find that Bogan’s claim for a writ of prohibition has no merit.

C. Procedural Deficiencies in the Petition Provide Independent Grounds to Grant Respondent’s Motion for Summary Judgment

{¶6} Bogan, who is confined in a county jail, is required to comply with the statutory requirements of R.C. 2969.25 upon filing his petition for a writ of prohibition against the Cuyahoga County Court of Common Pleas. As recognized by the Ohio Supreme Court, “[t]he requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate’s action to dismissal.” *State ex rel. Ridenour v.*

Brunzman, 117 Ohio St.3d 260, 2008-Ohio- 854, 883 N.E.2d 438, ¶ 5, quoting *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶ 5. Here, Bogan failed to provide this court with a notarized affidavit that describes previously filed civil actions as required under R.C. 2969.25(A) and a certified statement setting forth the balance in his inmate account as required under R.C. 2969.25(C)(1). Thus, Bogan's noncompliance with the statute further supports this court's decision granting respondent's motion for summary judgment. See *State ex rel. Manns v. Henson*, 119 Ohio St.3d 348, 2008-Ohio-4478, 894 N.E.2d 47 (affirming the court of appeals' dismissal of appellant's petition for a writ of prohibition because appellant failed to comply with R.C. 2969.25).

{¶7} Moreover, despite asserting his claim against the Cuyahoga County Court of Common Pleas in the body of his petition, Bogan failed to properly name the respondent in the caption and failed to include the address of the respondent in the caption as required by Civ.R. 10(A). This omission also renders Bogan's petition procedurally defective. See *Robinson v. Cuyahoga Common Pleas Court*, 8th Dist. Cuyahoga No. 103623, 2016-Ohio-409 (granting respondent's motion for summary judgment on petition for writ of prohibition on several grounds, including petitioner's failure to comply with Civ.R. 10(A)).

{¶8} Accordingly, we grant the Cuyahoga County Court of Common Pleas' motion for summary judgment. Costs to Bogan. The court directs the clerk of courts

to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶9} Writ denied.

LARRY A. JONES, SR., JUDGE

TIM McCORMACK, P.J., and
SEAN C. GALLAGHER, J., CONCUR