

[Cite as *State ex rel. Hopgood v. Cuyahoga Cty. Prosecutor's Office*, 2018-Ohio-4121.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107098

**STATE OF OHIO, EX REL.
CHIQUITTA HOPGOOD**

RELATOR

vs.

CUYAHOGA COUNTY PROSECUTOR'S OFFICE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 517762
Order No. 520537

RELEASE DATE: October 9, 2018

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FOR RELATOR

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ATTORNEYS FOR RESPONDENT

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Cuyahoga County Prosecutor
By: Brian R. Gutkoski
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EILEEN A. GALLAGHER, A.J.:

{¶1} Chiquitta Hopgood has filed a complaint for a writ of mandamus, pursuant to R.C. 149.43(C)(1)(b), in order to compel the Cuyahoga County prosecutor (“prosecutor”) to provide copies of “all records, documents, information, and data” that relate to the criminal prosecution and conviction of Brendan Weems in *State v. Weems*, Cuyahoga C.P. No. CR-14-586089-A. The prosecutor has filed a motion for summary judgment, which is granted for the following reasons.

{¶2} On August 14, 2014, Hopgood’s husband, Weems, was indicted for multiple counts of rape, attempted rape, kidnapping and gross sexual imposition.¹ In February 2015, Weems was found guilty of one count of rape and one count of kidnapping. On April 2, 2015, Weems was sentenced to a term of incarceration of 15 years. Weems’s conviction and sentence were affirmed on appeal in *State v. Weems*, 8th Dist. Cuyahoga No. 102954, 2016-Ohio-701.

{¶3} On September 14, 2017, October 18, 2017, and November 16, 2017, Hopgood requested, by mail, the following records from the prosecutor maintained by the prosecutor in *Weems*, Cuyahoga C.P. No. CR-14-586089-A: 1) all arrest records; 2) all incident reports; 3) all investigation and investigatory reports; 4) all warrants, arrest and search/seizure; 5) all statements by all witnesses and victims; 6) all

¹Attached to the prosecutor’s motion for summary judgment, exhibits Nos. 2 and 3, are records that demonstrate that Hopgood and Weems were married on April 13, 2001.

evidentiary reports; 7) all reports of scientific findings; 8) all interviews and written reports of Brendan Weems by the Cuyahoga County Department of Children and Family Services; and 9) all other records, documents, information and data that are not otherwise exempt by statute.

{¶4} On September 29, 2017, the prosecutor responded to Hopgood’s request for records and declined to provide any requested record on the basis that “[t]o the extent your request seeks public records on behalf of Mr. Weems, an inmate’s designee is not entitled to obtain records absent compliance with R.C. 149.43(B)(8).” On April 20, 2018, Hopgood filed this original action for a writ of mandamus.

{¶5} R.C. 149.43(B)(8) provides that:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge’s successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

{¶6} The Supreme Court of Ohio has established that R.C. 149.43(B)(8) mandates that an incarcerated person must obtain approval from the sentencing trial court prior to seeking any records relating to his or her criminal case. *State ex rel. Russell v. Bican*, 112 Ohio St.3d 559, 2007-Ohio-813, 862 N.E.2d 102; *see also State ex rel. Barb v.*

Cuyahoga County Jury Commr., 8th Dist. Cuyahoga No. 93326, 2009-Ohio-3301. In addition, a relative or any party in privity with the incarcerated person that is the subject of the records request, may not bypass the requirement of R.C. 149.43(B)(8) by seeking a records request on their own behalf.

And Danny cannot circumvent the requirement of R.C. 149.43(B)(8), which requires a finding by his sentencing judge or the judge's successor that the requested information is necessary to support what appears to be a justiciable claim, by designating his brother to request the records for him. As the court of appeals concluded, "Herbert may not do indirectly what Danny is prohibited from doing directly."

State ex rel. Barb v. Cuyahoga Cty. Jury Commr., 128 Ohio St.3d 528, 2011-Ohio-1914, 947 N.E.2d 670, quoting *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, 8th Dist. Cuyahoga No. 95005, 2010-Ohio-3301.

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{¶7} Herein, Hopgood is the wife of Weems and seeks records that are associated with Weems's conviction in CR-14-586089. The requirements of R.C. 149.43(B)(8) cannot be circumvented by Hopgood because she is in privity with Brandon Weems. *State ex rel. Roberson v. Mason*, 8th Dist. Cuyahoga No. 91783, 2009-Ohio-1884. As was the case in *Roberson*, Hopgood is acting as a designee of Weems. We conclude, therefore, that Weems must comply with R.C. 149.43(B)(8) and secure the requisite finding from the sentencing judge before Hopgood may receive relief in mandamus to compel the release of the records that are the subject of this action.

{¶8} Thus, Hopgood has failed to establish that she is entitled to a writ of mandamus in order to compel the prosecutor to provide the requested records.

{¶9} Accordingly, we grant the prosecutor's motion for summary judgment. Costs to Hopgood. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of this entry upon the journal as required by Civ.R. 58(B).

{¶10} Writ denied.

EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

EILEEN T. GALLAGHER, J., and
LARRY A. JONES, SR., J., CONCUR