

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE EX REL. IS'SIAH CHAMBERS, :

Relator, :

No. 109750

v. :

ADULT PAROLE AUTHORITY, :

Respondent. :

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED

DATED: November 20, 2020

Writ of Mandamus
Motion No. 541610
Order No. 542331

Appearances:

Christopher McNeal, *for relator.*

David Yost, Ohio Attorney General, and Jared S. Yee,
Assistant Attorney General, *for respondent.*

MICHELLE J. SHEEHAN, P.J.:

{¶ 1} On May 27, 2020, the relator, Is'siah Chambers, commenced this mandamus action against the respondent, the Ohio Adult Parole Authority, to compel the Authority to hold a proper parole revocation hearing and allow him to

present evidence in mitigation. Chambers avers that the Authority defrauded him out of such a revocation hearing.

{¶ 2} On July 22, 2020, when there had been no response from the Authority, this court issued an entry noting that the relator had not complied with Civ.R. 10(A) that requires the relator to include the addresses of all the parties. Thus, the court ordered the relator by August 4, 2020, to file an amended complaint in compliance with Civ.R. 10(A) and to serve it on the respondent by certified mail. When the relator had not filed an amended complaint by August 17, 2020, this court ordered him to show cause by August 28, 2020, why this court should not dismiss his case for failure to comply with the court's order. On August 28, 2020, the relator filed the amended complaint with a brief showing cause. Relator's attorney explained that his "outlook e-mail account incorrectly flagg[ed] those notices as spam." (Relator's August 28, 2020 reply brief to order to show cause.) The amended complaint listed the Authority's Cleveland address.

{¶ 3} On September 29, 2020, the Authority moved for leave to file an answer instanter. The Authority's lawyer asserted,

that the delay in filing was caused by excusable neglect as a result of the COVID-19 pandemic. As a result of the measures taken by the Ohio Attorney General's Office as a response to the COVID-19 pandemic, all assistant attorneys general, including undersigned counsel, are working remotely. Additionally, support staff are only working within the office on a limited basis. As a result, there was a breakdown in the channels of communication resulting in the undersigned counsel not being notified of the case or any due dates through our case management system. We only became aware of the issue upon being informed by the Court.

(Respondent's Motion for Leave.) The court notes that the Authority answered from its Columbus office.

{¶ 4} On October 6, 2020, the Authority moved to dismiss or in the alternative, for summary judgment. Subsequently, the court granted the parties until November 2, 2020, in which to file any evidence they wish to present along with briefs supporting their position. The only filing made was an affidavit of Dennis Seger, a healthcare administrator at the Toledo Correctional Institution where Chambers is incarcerated.¹ For the following reasons, this court grants the Authority's motion for summary judgment and denies the application for a writ of mandamus.

Factual and Procedural Background

{¶ 5} In August 2013, Chambers pled guilty to felonious assault in *State v. Chambers*, Cuyahoga C.P. No. CR-13-570826-A and to unlawful sexual contact with a minor in *State v. Chambers*, Cuyahoga C.P. No. CR-13-571622-D. The trial court on September 19, 2013, sentenced him to 18 months with five years of postrelease control for the sexual contact offense consecutive to four years with three years postrelease control for the felonious assault. The court also granted him 234 days of jail-time credit. Chambers was released on July 28, 2018, at the expiration of his stated terms and began his period of postrelease control.

¹ The court notes that the Seger affidavit is a copy of the affidavit attached to the Authority's motion for summary judgment.

{¶ 6} In June 2019, the grand jury indicted Chambers for failure to comply with an officer's signal, tampering with evidence, having a weapon while under disability, carrying concealed weapons, and improperly handling firearms in a motor vehicle. *State v. Chambers*, Cuyahoga C.P. No. CR-19-640434-A. The Authority hearing summary report relates that when police tried to make a "car stop" of the vehicle Chambers was driving, he sped away, causing the police to give chase. Eventually, Chambers, carrying a bag, jumped out of the car, and he was arrested after a foot chase. The bag he was carrying contained a loaded firearm. On October 8, 2019, Chambers pled guilty to one count of failure to comply and one count of having a weapon while under disability. The trial court imposed a one-year community control sanction and released him from that on March 13, 2020. On the same day, the Authority placed a parole violation hold on Chambers and transported him to the Lorain Correctional Institution.

{¶ 7} According to the affidavit of Campbell Bailey, a parole officer in the Sex Offender Unit, he and another parole officer on March 19, 2020, went to serve Chambers with the paperwork regarding his parole violation. At that time, Chambers was suffering from symptoms of COVID-19: coughing, chills, muscle aches, headaches, nasal congestion, and an upper respiratory infection. Thus, Chambers was in isolation under medical quarantine. Bailey and his fellow parole officer could only speak to Chambers through the cuff port in his cell. He was not permitted to exit the cell, and the parole officers could not pass papers or writing utensils through the cuff port.

{¶ 8} Bailey further swears in his affidavit that he and his fellow parole officer explained all of the documents to Chambers and showed him the paperwork through the glass viewport. As of March 2020, Chambers had 969 days of prison time available. The officers informed him that should he waive his appearance on the parole hearing, the Parole Board could not exceed the officers' recommended sentence of 270.

{¶ 9} Bailey's affidavit continues that Chambers ultimately waived his appearance, witnesses, and right to counsel after hearing that the Parole Board would not exceed the recommended sentence. Bailey swears that all of Chambers's verbal answers and agreement were documented and that the two parole officers signed and witnessed the documents on Chambers's behalf due to the medical isolation order.

{¶ 10} Attached to the Authority's summary judgment motion is a copy of Chambers's "Waiver of Appearance at Release Violation Sanction Hearing" dated March 19, 2020. This form waives Chambers's appearance before the Parole Board, the right to present witnesses and/or documentary evidence, the right to confront and cross-examine adverse witness, and the right to representation by counsel. The form explains that the Authority will make a decision based on an examination of the record as a whole, his history of supervision adjustment, the severity of the violations and the mitigatory and aggravating factors surrounding the violations and the nonbinding sanction recommendation of the supervising unit. The form also states that the Authority is recommending a sanction of 270 days. The form states

that Chambers provided a verbal statement of mitigation. The form shows that Bailey signed it on behalf of Chambers on March 19, 2020.

{¶ 11} The Authority also attached a “Request for Witnesses” form. This form indicates that Chambers did not request the presence of any witnesses/documents at his release violation hearing and that he did not request representation or counsel at his release violation hearing. Both parole officers signed this form on Chambers’s behalf.

{¶ 12} In response, Chambers has only the averments of his complaint. He avers that he refused to waive his right to a hearing, that he refused to waive probable cause for the violation, and that he never provided any mitigation to the parole officers be it written, verbal, or otherwise.

{¶ 13} The Authority conducted a violation hearing on April 9, 2020, without Chambers’s presence. It imposed a 242-day prison sanction for the violation.

Discussion of Law

{¶ 14} 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. *State ex rel. Harris v. Rhodes*, 54 Ohio St.2d 41, 374 N.E.2d 641 (1978). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977); *State ex rel.*

Shafer v. Ohio Turnpike Comm., 159 Ohio St. 581, 113 N.E.2d 14 (1953); *State ex rel. Connole v. Cleveland Bd. of Edn.*, 87 Ohio App.3d 43, 621 N.E.2d 850 (8th Dist.1993).

{¶ 15} Additionally,

the issuance of a writ of mandamus rests, to a considerable extent at least, within the sound discretion of the court to which application for the writ is made. The writ is not demandable as a matter of right, or at least is not wholly a matter of right; nor will it issue unless the relator has a clear right to the relief sought, and makes a clear case for the issuance of the writ. The facts submitted and the proof produced must be plain, clear and convincing before a court is justified in using the strong arm of the law by way of granting the writ.

State ex rel. Pressley v. Indus. Comm. of Ohio, 11 Ohio St.2d 141, 161, 228 N.E.2d 31 (1967).

{¶ 16} Furthermore, Civ.R. 56(E) provides in pertinent part that,

[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

{¶ 17} In the present case, Chambers has not sustained his burden of proof of establishing by clear and convincing evidence that he was defrauded out of a parole revocation hearing. The Authority's affidavits and supporting attached documentary evidence outweigh Chambers's mere averments of his complaint.

{¶ 18} Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of mandamus. Relator to pay costs.

The court instructs the clerk to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶ 19} Writ denied.

MICHELLE J. SHEEHAN, PRESIDING JUDGE

RAYMOND C. HEADEN, J., and
MARY EILEEN KILBANE, J., CONCUR