

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO, EX REL., BYRON HARRIS,	:	
Relator,	:	No. 109779
v.	:	
JUDGE JOHN D. SUTULA,	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED
DATED: September 11, 2020

Writ of Mandamus
Motion No. 540389
Order No. 540714

Appearances:

Byron Harris, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, *for respondent*.

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Byron Harris has filed a complaint for a writ of mandamus. Harris seeks an order from this court that requires Judge John D. Sutula to render rulings with regard to four motions filed in *State v. Harris*, Cuyahoga C.P. No. CR-14-

589543-A: 1) motion to withdraw as attorney of record filed on December 9, 2015, in response to pro se motion to dismiss counsel filed October 6, 2015; 2) motion to withdraw as counsel of record filed January 13, 2020; 3) motion to vacate or void conviction due to structural error filed January 24, 2020; and 4) motion to request a warrant to convey defendant to the Cuyahoga County Jail for new trial pursuant to Crim.R. 43(A)(1) filed January 28, 2020. For the following reasons, we decline to issue a writ of mandamus.

{¶ 2} Attached to Judge Sutula's motion for summary judgment are copies of judgments and filings that demonstrate Harris's request for mandamus is moot. On December 30, 2015, Harris filed a notice of withdrawal of his motion to dismiss counsel (Exhibit B). On January 21, 2020, Judge Sutula granted the motion to withdraw as counsel for Harris (Exhibit C). On August 3, 2020, Judge Sutula denied the motion to vacate or void conviction due to structural error (Exhibit D). On August 3, 2020, Judge Sutula denied the motion to request a warrant to convey defendant to the Cuyahoga County Jail for new trial pursuant to Crim.R. 43(A)(1) (Exhibit D). Relief is unwarranted because mandamus will not compel the performance of a duty that has already been performed. *State ex rel. Williams v. Croce*, 153 Ohio St.3d 348, 2018-Ohio-2703, 106 N.E.3d 55; *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49; *State ex rel. Fontanella v. Kontos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220.

{¶ 3} In addition, Harris’s complaint for a writ of mandamus is defective. The complaint fails to contain a sworn affidavit that contains a description of each civil action or appeal filed in the previous five years per R.C. 2969.25(A). *State v. Henton*, 146 Ohio St.3d 9, 2016-Ohio-1518, 50 N.E.3d 533. The complaint also fails to contain a statement certified by the institutional cashier setting forth the balance in the inmate’s account for the preceding six months per R.C. 2969.25(C). *State ex rel. Neil v. French*, 153 Ohio St.3d 271, 2018-Ohio-2692, 104 N.E.3d 764. Finally, the failure to comply with R.C. 2969.25(A) and (C) cannot be cured by an amended complaint. *State ex rel. Hall v. Mohr*, 140 Ohio St.3d 297, 2014-Ohio-3735, 17 N.E.3d 581.

{¶ 4} Accordingly, we grant Judge Sutula’s motion for summary judgment. Costs to Harris. 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).

{¶ 5} Writ denied.

KATHLEEN ANN KEOUGH, JUDGE

MARY J. BOYLE, P.J., and
LARRY A. JONES, SR., J., CONCUR