

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO VINCENT EL ALAN
PARKER BEY EX REL.,

:

Relator,

:

No. 107909

v.

:

NAILAH K. BYRD, ET AL.,

:

Respondent.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED

DATED: April 16, 2021

Writ of Mandamus
Order No. 545448

Appearances:

Vincent El Alan Parker Bey, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Kelli K. Perk, Assistant Prosecuting
Attorney, *for respondent*.

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Pursuant to the opinion rendered by the Ohio Supreme Court in *State*

ex rel. Parker Bey v. Byrd, 160 Ohio St.3d 141, 2020-Ohio-2766, 154 N.E.3d 57, this court is required to “apply the Public Records Act to determine whether Parker Bey is entitled to a writ of mandamus to compel [Nailah K. Byrd, the Cuyahoga County Clerk of Courts] to produce the requested journal entries and whether Parker Bey is entitled to statutory damages and court costs.” Specifically, the court is required to determine whether Parker Bey is entitled to a writ of mandamus to compel Byrd to provide him with a copy of the Cuyahoga County Clerk of Court’s retention schedule. In addition, this court is required to determine whether mandamus should issue to require that Parker Bey be provided with copies of journal entries maintained in *State v. Parker*, Cuyahoga C.P. No. CR-95-320034-ZA: 1) a journal entry filed on or about June 2, 2002; 2) a journal entry filed on about February 4, 2003; and 3) a journal entry filed on or about May 5, 2003.

{¶ 2} Initially, we find that the request for a copy of the retention schedule is moot. The affidavit of Laura Black, Chief of Staff for the Cuyahoga County Clerk of Courts, that is attached to “respondent’s response to court’s January 2, 2019, show cause order” demonstrates that Parker Bey was provided with a copy of the retention schedule.¹ In fact the Supreme Court of Ohio, in *State ex rel. Parker Bey v. Byrd, supra*, held that:

Parker Bey also requested the Cuyahoga County clerk of courts’ records-retention schedule. Byrd stated in her supplemental brief filed in the court of appeals that she had no record of Parker Bey’s request, but she nonetheless served the schedule on Parker Bey, as reflected by the certificate of service that accompanied the filing. See Civ.R. 5(B)(2); *see also Davis v. Immediate Med. Servs., Inc.*, 80 Ohio

¹ Affidavit of Laura Black is attached.

St.3d 10, 15, 1997-Ohio-363, 684 N.E.2d 292 (1997). Parker Bey contends that he never received the document. Because Byrd has made clear that she is willing to provide Parker Bey with a copy of the retention schedule, there is no legal dispute here concerning whether Parker Bey is entitled to that record. As a matter of courtesy, Byrd should send Parker Bey a new copy of the retention schedule.

Parker Bey at ¶ 16.

{¶ 3} It must also be noted that Byrd provided Parker Bey, on May 28, 2020, with a second copy of the Cuyahoga County Clerk of Courts' retention schedule. *See* docket maintained in *State ex rel. Parker Bey v. Byrd*, 8th Dist. Cuyahoga No. 107909.

{¶ 4} In addition, regarding the requested journal entries, we find that Parker Bey has failed to comply with R.C. 149.43(B)(8), which 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.

{¶ 5} Herein, Parker Bey is currently incarcerated at the Northeast Ohio Correctional Center in Youngstown, Ohio. Because Parker Bey is incarcerated, he is required to comply with the mandatory requirement of R.C. 149.43(B)(8) and seek leave of the judge that sentenced him to incarceration prior to seeking public

records. The failure to seek the permission of the sentencing trial court judge prior to requesting public records is fatal to the complaint for a writ of mandamus. The Ohio Supreme Court has established that the leave-request requirement of R.C. 149.43(B)(8) is applicable to any public-records request made by an incarcerated person. The leave requirement applies, inter alia, to a docket sheet, criminal complaint, journal entry, and jury-verdict form.

The Fifth District correctly concluded that Ware’s mandamus claim fails as a matter of law. As a person incarcerated pursuant to a criminal conviction, Ware first must obtain the approval of the sentencing judge before he is entitled to access to “any public record concerning a criminal investigation or prosecution.” R.C. 149.43(B)(8). We have characterized this language as “broad and encompassing.” *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 14 (involving former R.C. 149.43(B)(4), now R.C. 149.43(B)(8)). Because the records Ware requested—an indictment, a docket sheet, a complaint, and jury-verdict forms—clearly concern a criminal prosecution, Giavasis had no duty to give them to Ware without the sentencing judge’s approval.

State ex rel. Ware v. Giavasis, 160 Ohio St.3d 383, 2020-Ohio-3700, 157 N.E.3d 710, ¶ 6. *See also State ex rel. Brown v. Rhodes*, 112 Ohio St.3d 153, 2006-Ohio-6523, 858 N.E.2d 412; *State v. McDuffie*, 8th Dist. Cuyahoga No. 105614, 2017-Ohio-8490. The affidavit of Laura Black further established that the requested journal entries do not exist or were provided to Parker Bey.

¶ 6 Finally, because Byrd provided Parker Bey with the available journal entry and the retention schedule, and that two of the requested journal entries do not exist, we find that Parker Bey is not entitled to statutory damages or costs. *State ex rel. Ware v. Giavasis, supra; State ex rel. McDougald v. Greene*, 155 Ohio St.3d 216, 2018-Ohio-4200, 120 N.E.3d 779; *State ex rel. Pietrangelo v. Avon*

Lake, 146 Ohio St.3d 292, 2016-Ohio-2974, 55 N.E.3d 1091; *State ex rel. Doe v. Smith*, 123 Ohio St.3d 44, 2009-Ohio-4149, 914 N.E.2d 159.

{¶ 7} Accordingly, we decline to issue a writ of mandamus on behalf of Parker Bey. Costs to Parker Bey. 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).

{¶ 8} Writ denied.

KATHLEEN ANN KEOUGH, JUDGE

MARY J. BOYLE, A.J., and
ANITA LASTER MAYS, J., CONCUR

STATE OF OHIO)
) SS. AFFIDAVIT
COUNTY OF CUYAHOGA)

I, Laura Black, being first duly sworn, depose and state the following:

1. I am the Chief of Staff for respondent (“the Clerk”) in the matter styled, State ex rel. Vincent A. Parker, etc. v. Clerk of Courts of Cuyahoga County, Cuyahoga Court of Appeals Case No. CA 18 107909, and I have personal knowledge of the facts and circumstances stated herein.

2. Attached hereto as **Exhibit A** is a true and accurate copy of the docket sheet for the matter of State of Ohio vs. Vincent A. Parker, Cuyahoga County Common Pleas Court Case No. CR-95-320034-
ZA, (“the Criminal Case”) current as of today’s date. See Ex. A.

4. I have become aware that Mr. Parker is seeking the following documents from the Cuyahoga County Clerk of Courts:

- (a) this Office’s current record retention schedule;
- (b) an order or “document” filed in the Criminal Case on or about June 2, 2002;
- (c) an order or “document” filed in the Criminal Case on or about Feb. 4, 2003;
- (d) an order or “document” filed in the Criminal Case on or about May 5, 2003;

5. I have searched the Clerk’s requests and I do not find a request from Parker to the Clerk prior to filing this lawsuit. At no time did Parker deposit any costs to obtain these records.

6. Item No. 4(a) is attached hereto as Ex. B.

7. The docket (Ex. A) has no filings on June 2, 2002 or on May 5, 2003 so there are no responsive documents as to Item Nos. 4(b) and 4(d).

8. Item No. 4(c) is attached hereto as Ex. C.

9. The Clerk’s office maintains an online docket readily available to the public.


10. Ohio Sup. R. 45(B)(4) provides, “A court or clerk of court may charge its actual costs incurred in responding to a request for direct access to a court record. The court or clerk may require a deposit of the estimated actual costs.” Ohio Sup. R. 44(A) defines “actual costs” as “the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs, or other transmitting costs; and

any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.”

FURTHER AFFIANT SAYETH NAUGHT.


Laura Black

Sworn to and subscribed in my presence this 16th day of January, 2019



P. BOYLE, Notary Public
STATE OF NEW YORK
Commission Expires 12/31/2021