

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

MICHAEL MILLER-EL,	:	
	:	
Relator,	:	No. 110727
	:	
v.	:	
	:	
STATE OF OHIO,	:	
	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DISMISSED
DATED: September 24, 2021

Writ of Mandamus
Motion No. 549080
Order No. 549174

Appearances:

Michael Miller-El, *pro se*

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

EILEEN T. GALLAGHER, J.:

{¶ 1} Michael Miller-El, the relator, has filed a complaint for a writ of mandamus. Miller-El seeks dismissal of the criminal complaint filed in *State v. Miller-El*, Cuyahoga C.P. No. CR-19-641058-A. The complaint for a writ of

mandamus is premised upon various allegations of violations of Miller-El's constitutional rights and federal law.

{¶ 2} The Cuyahoga County Prosecuting Attorney has filed a Civ.R. 12(B)(6) motion to dismiss that is granted for the following reasons.

I. Procedural Defects

{¶ 3} Initially, we find that the complaint for a writ of mandamus is procedurally defective.

A. Failure to comply with R.C. 2969.25(A)

{¶ 4} Pursuant to R.C. 2969.25(A), an inmate that commences a civil action against a government entity or employee must file a sworn affidavit that contains a description of each civil action or appeal of a civil action filed in the previous five years in any state or federal court. *State ex rel. McGrath v. McDonnell*, 126 Ohio St.3d 511, 2010-Ohio-4726, 935 N.E.2d 830. Miller-El has failed to comply with R.C. 2969.25(A).

B. Failure to comply with R.C. 2969.25(C)(1)

{¶ 5} R.C. 2969.25(C)(1) requires that Miller-El file a statement setting forth his inmate account balance for each of the preceding six months as certified by the institutional cashier. Miller-El has failed to provide this court with a certified statement setting forth the balance in his inmate account. *Freed v. Bova*, 8th Dist. Cuyahoga No. 99908, 2013-Ohio-4378; *Turner v. Russo*, 8th Dist. Cuyahoga No. 87852, 2006-Ohio-4490.

C. Failure to comply with Civ.R. 10(A)

{¶ 6} Miller-El has failed to comply with Civ.R. 10(A), which requires that the complaint must include the addresses of all parties in the caption of the complaint for a writ of mandamus. *Bandy v. Villanueva*, 8th Dist. Cuyahoga No. 96866, 2011-Ohio-4831.

D. Improper Caption

{¶ 7} We also find that Miller-El's complaint is defective because it is improperly captioned. Miller-El styled this action as "State of Ohio vs. Michael Miller-El." Pursuant to R.C. 2731.04, a complaint for a writ of mandamus must be brought in the name of the state on relation of the person applying for the writ of mandamus. *Rust v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766; *State ex rel. Simms v. Sutula*, 81 Ohio St.3d 110, 689 N.E.2d 564 (1998); *Maloney v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 181 N.E.2d 270 (1962).

II. Mandamus Requirements and Analysis

{¶ 8} Finally, the complaint for a writ of mandamus fails to state a claim upon which relief can be granted. For this court to issue a writ of mandamus, Miller-El must demonstrate: (1) that Miller-El possesses a clear legal right to the relief prayed for, (2) that the trial judge presiding over *State v. Miller-El*, Cuyahoga C.P. No. CR-19-641058 possesses a clear legal duty to perform the requested act, and (3) there exists no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 451 N.E.2d 225 (1983); *State ex rel.*

Westchester v. Bacon, 61 Ohio St.2d 42, 399 N.E.2d 81 (1980); *State ex rel. Heller, v. Miller*, 61 Ohio St.2d 6, 399 N.E.2d 66 (1980); *State ex rel. Harris v. Rhodes*, 54 Ohio St.2d 41, 374 N.E.2d 641 (1978)

{¶ 9} A thorough review of the complaint for mandamus fails to reveal that Miller-El has established a clear legal right or that the trial court judge possesses any legal duty that must be enforced. *State ex rel. Dreamer v. Mason*, 115 Ohio St.3d 190, 2007-Ohio-4789, 874 N.E.2d 510; *State ex rel. Woods v. Gagliardo*, 49 Ohio St.2d 196, 360 N.E.2d 705 (1977). Of greater importance is the fact that Miller-El pled guilty to one count of retaliation (R.C. 2921.05) and was sentenced to time served on July 26, 2021, in *State v. Miller-El*, Cuyahoga C.P. No. CR-19-641058-A. Miller-El possesses an adequate remedy in the ordinary course of the law through an appeal of his plea of guilty. *State ex rel. Florence v. Zitter*, 106 Ohio St.3d 87, 2005-Ohio-3804, 831 N.E.2d 1003; *State ex rel. Kuczak v. Safford*, 67 Ohio St.3d 123, 616 N.E.2d 230 (1993); *Henderson v. Saffold*, 8th Dist. Cuyahoga No. 100406, 2014-Ohio-306. Miller-El has failed to state a claim upon which relief *can* be granted and dismissal is appropriate pursuant to Civ.R. 12(B)(6). *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966.

{¶ 10} Accordingly, we grant the motion to dismiss filed by the Cuyahoga County Prosecuting Attorney. Costs to Miller-El. 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).

{¶ 11} Complaint dismissed.

EILEEN T. GALLAGHER, JUDGE

MARY J. BOYLE, A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR