

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

MARK A. BEDELL,	:	PER CURIAM OPINION
	:	
Relator,	:	CASE NO. 2017-P-0006
	:	
- vs -	:	
	:	
PORTAGE COUNTY COURT	:	
OF COMMON PLEAS,	:	
	:	
Respondent.	:	
	:	

Original Action, Complaint for Mandamus.

Judgment: Complaint dismissed.

Mark A. Bedell, pro se, 600 Turner Road, Bedford, OH 44146 (Relator).

Victor V. Viglucci, Portage County Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Respondent).

PER CURIAM

{¶1} Pending before this court is relator, Mark A. Bedell’s, Complaint for Mandamus. For the following reasons, the Complaint is dismissed.

{¶2} On January 30, 2017, Bedell filed a Complaint for Mandamus.

{¶3} The facts alleged in the Complaint arise out of Portage County Court of Common Pleas Case No. 2006 CR 0272, wherein Bedell was charged with four counts of Nonsupport of Dependents. Bedell pled guilty to two counts of the Indictment and, on

March 26, 2008, was sentenced to, inter alia, 200 days in the Portage County Jail and community control sanctions.

{¶4} This court reversed, in part, Bedell's sentence on November 13, 2009. See *State v. Bedell*, 11th Dist. Portage No. 2008-P-0044, 2009-Ohio-6031.

{¶5} Bedell was resentenced on October 5, 2016. On November 23, 2016, the trial court denied a Motion to Vacate Sentence filed by Bedell on the same day. On December 5, 2016, the trial court denied a Motion for Jail Time Credit filed on May 21, 2008.

{¶6} There is nothing currently pending in Case No. 2006 CR 0272 and its status is closed.

{¶7} Bedell seeks to have Case No. 2006 CR 0272 dismissed with prejudice based on alleged errors and violations of his constitutional rights by the trial court.¹

{¶8} A complaint may be dismissed sua sponte and without notice "only if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint." *McAuley v. Smith*, 82 Ohio St.3d 393, 395, 696 N.E.2d 572 (1998). Bedell's Complaint for Mandamus is subject to such dismissal.

{¶9} "Mandamus is a writ, issued in the name of the state to an inferior tribunal * * *, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." R.C. 2731.01. "Application for the writ of

1. Examples from the Complaint: "defendant Bedell was never properly served therefore after statute of limitation exceeded case was officially closed after 8 years"; "Judge Laurie J. Pittman * * * couldn't close case without defendant Bedell being present"; "Portage County had no jurisdiction of him due to appellate court's decision to reverse and remand sentence"; and "Judge Laurie J. Pittman violated my rights under the common law and sentence me without asking defendant Bedell to enter a plea then sentence defendant Bedell on plea that appellate court remanded and reversed."

mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit.” R.C. 2731.04.

{¶10} This court has affirmed that “a court may sua sponte dismiss a petition for an extraordinary writ when it is improperly captioned.” *Kimble v. McKay*, 11th Dist. Trumbull No. 2012-T-0033, 2012-Ohio-2707, ¶ 7 (cases cited). This court has also affirmed that a petition “must be brought against the public official who has the legal obligation to perform the non-discretionary act in question” and “must be properly served upon that public official before this court would have jurisdiction to issue a writ.” *State v. Scranton*, 11th Dist. Portage No. 2005-P-0020, 2005-Ohio-2886, ¶ 5.

{¶11} Bedell’s application for writ of mandamus is captioned a complaint and is not in the name of the state on relation of the applicant. Even more significant, it has not been served upon the public official upon whom the law has purportedly enjoined a duty to perform. Accordingly, it is subject to sua sponte dismissal.

{¶12} We further note that the Ohio Supreme Court has affirmed the sua sponte dismissal of an application for mandamus on the grounds that the relator has an adequate remedy at law. *State ex rel. Russell v. Duncan*, 64 Ohio St.3d 538, 539, 597 N.E.2d 142 (1992); *State ex rel. Linndale v. Teske*, 74 Ohio St.3d 1415, 655 N.E.2d 736 (1995).

{¶13} Bedell’s Complaint does not seek to compel the trial court to perform an act enjoined upon it as duty. Rather, Bedell seeks to have his criminal case dismissed based on alleged errors for which an adequate remedy at law exists, including appeal and postconviction relief. *State ex rel. Jaffal v. Calabrese*, 105 Ohio St.3d 440, 2005-Ohio-2591, 828 N.E.2d 107, ¶ 5 (“[s]entencing errors by a court that had proper

jurisdiction cannot be remedied by extraordinary writ”); *State ex rel. Sampson v. Parrott*, 82 Ohio St.3d 92, 93, 694 N.E.2d 463 (1998) (relator “had adequate remedies at law by appeal or postconviction relief to review the claimed sentencing error”); *State ex rel. Rudolph v. Horton*, 119 Ohio St.3d 350, 2008-Ohio-4476, 894 N.E.2d 49, ¶ 3 (relator “had an adequate remedy at law by appeal to raise any error by the trial court in calculating his jail-time credit”).

{¶14} For the foregoing reasons, Bedell’s Complaint for Mandamus is hereby dismissed.

CYNTHIA WESTCOTT RICE, P.J., DIANE V. GRENDALL, J., COLLEEN MARY O’TOOLE, J., concur.