

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

STATE OF OHIO ex rel. CHRISTOPHER M. CRETELLA	:	<b>PER CURIAM OPINION</b>
	:	
Relator,	:	<b>CASE NO. 2017-T-0024</b>
	:	
- vs -	:	
	:	
JUDGE PETER J. KONTOS,	:	
	:	
Respondent.		

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

*Christopher M. Cretella*, pro se, PID: A681-379, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Relator).

*Dennis Watkins*, Trumbull County Prosecutor, and *William J. Danso*, Assistant Prosecutor, 160 High Street, NW, 4th Floor, Administration Bldg., Warren, OH 44481 (Respondent).

PER CURIAM.

{¶1} Relator, Christopher M. Cretella, seeks a writ of mandamus compelling respondent, Judge Peter J. Kontos, to order the Trumbull County Prosecutor to disclose a copy of Cretella’s “unamended” plea agreement dated November 5, 2015. We dismiss Cretella’s petition pursuant to Civ.R. 12(B)(6).

{¶2} Mandamus is a writ issued to a public officer to perform an act “which the law specially enjoins as a duty resulting from an office.” R.C. 2731.01. “For a writ of mandamus to issue, the relator must establish a clear legal right to the relief prayed for; the respondent must have a clear legal duty to perform the act; and the relator must have no plain and adequate remedy in the ordinary course of the law.” *State ex rel. Widmer v. Mohney*, 11th Dist. Geauga No. 2007-G-2776, 2008-Ohio-1028, ¶31, citing *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79, 80, 526 N.E.2d 786 (1988).

{¶3} Judge Kontos moves to dismiss Cretella’s petition pursuant to Civ.R. 12(B)(6) for failing to state a claim upon which relief can be granted.

{¶4} In construing a complaint upon a motion to dismiss, the material allegations of the complaint are taken as true, and all reasonable inferences are drawn in favor of the nonmoving party. *Byrd v. Faber*, 57 Ohio St.3d 56, 60, 565 N.E.2d 584 (1991). Before a court may dismiss a complaint, “it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.” *O’Brien v. University Community Tenants Union*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus.

{¶5} Cretella’s petition seeks his “unamended” plea agreement pursuant to a public records request via R.C. 149.43. However, the document he filed with the trial court is captioned as a motion for discovery pursuant to Crim.R. 16 and does not indicate that it is a public records request or reference R.C. 149.43.

{¶6} There is no right to secure discovery in a criminal action following a guilty plea. *State ex rel. Little page v. Deters*, 148 Ohio St.3d 507, 2016-Ohio-7467, 71

N.E.3d 995, ¶5; Crim.R. 16(M). Here, Cretella already pleaded guilty and was sentenced to a four-year prison term. Thus, his petition fails to state a claim for discovery as he does not establish a clear legal right to the relief requested.

{¶7} Cretella likewise fails to establish a clear legal right to the information pursuant to a public records request. R.C. 149.43(B)(8) sets forth procedures governing disclosure of records maintained in a public office. *Hall v. State*, 11th Dist. Trumbull No. 2008-T-0073, 2009-Ohio-404, ¶9. R.C. 149.43(B)(8) states:

{¶8} “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.*” (Emphasis added.)

{¶9} R.C. 149.43(B)(8) reflects the General Assembly’s “public-policy decision to restrict a convicted inmate’s unlimited access to public records in order to conserve law enforcement resources.” *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, ¶14.

{¶10} For purposes of R.C. 149.43(B)(8), a “justiciable claim” is “a claim

properly brought before a court of justice for relief.” *State v. Seal*, 4th Dist. Highland No. 13CA10, 2014-Ohio-4168, ¶8, quoting *State v. Wilson*, 2d Dist. Montgomery No. 23734, 2011-Ohio-4195, ¶9. The statute does not state that a justiciable claim must be pending, but only that the inmate have a justiciable claim to be advanced.

{¶11} The document Cretella filed with the trial court is not a public records request. It does not mention the statute governing public records requests and does not ask the sentencing judge to make the necessary finding to satisfy R.C. 149.43(B)(8). Accordingly, Judge Kontos did not have a clear legal duty to provide the information, and Cretella does not have a clear legal right to the requested information. Moreover, if Cretella filed a public records request and the trial court denied the same, then Cretella could appeal the decision giving him an adequate remedy at law.

{¶12} Accordingly, Cretella’s petition for writ of mandamus fails to set forth a claim for which relief can be granted and is dismissed.

DIANE V. GRENDALL, J., TIMOTHY P. CANNON, J., and THOMAS R. WRIGHT, J.,  
concur.