

[Cite as *Pattie v. Woodward*, 2010-Ohio-5199.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MICHAEL S. PATTIE

Petitioner/Relator

-vs-

DEBORAH E. WOODWARD

Respondent

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 10-COA-017

O P I N I O N

CHARACTER OF PROCEEDING:

Complaint for Writ of Mandamus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

October 20,2010

APPEARANCES:

For Petitioner

For Respondent

MICHAEL S. PATTIE #581356
Richland Correctional Institution
1001 Olivesburg Road
Mansfield, OH 44901

ANDREW N. BUSH
Assistant Ashland County Prosecutor
307 Orange Street
Ashland, OH 44805

Farmer, J.

{¶1} Petitioner, Michael S. Pattie, has filed a Petition for Writ of Mandamus requesting Respondent be ordered to grant Petitioner jail time credit for the time Petitioner spent at the Crossroads Center for Change. Respondent has filed a motion to dismiss pursuant to Civ.R. 12(B)(6) based upon Petitioner's failure to bring this cause of action in the name of the State of Ohio.

{¶2} R.C. 2731.04 provides, "Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit." Failure to comply with these requirements is grounds for dismissal. *Thorne v. State*, 8th Dist., 2004-Ohio-6288; *Maloney v. Court of Common Pleas of Allen County* (1962), 173 Ohio St. 226, 181 N.E.2d 270. Relator herein has not properly captioned his complaint nor has he verified it by affidavit. *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382; *Perotti v. Mahoning County Clerk*, 7th Dist. No. 05-MA-202, 2006-Ohio-673. See also, *Selway v. Court of Common Pleas Stark County*, 2007 WL 2482621, *1 (Ohio App. 5 Dist.). For these reasons, we grant Respondent's motion to dismiss. Even had we considered the merits of the Petition, a writ would not issue.

{¶3} To be entitled to the issuance of a writ of mandamus, the Relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41,

324 N.E.2d 641, citing *State ex rel. National City Bank v. Bd. of Education* (1977) 520 Ohio St.2d 81, 369 N.E.2d 1200.

{¶4} Petitioner's sole allegation is he is entitled to jail time credit for the time he spent at the Crossroads Center for Change. The Supreme Court has held, "[A defendant has] an adequate remedy at law by appeal to raise any error by the trial court in calculating his jail-time credit. *State ex rel. Brown v. Summit Cty. Court of Common Pleas*, 99 Ohio St.3d 409, 2003-Ohio-4126, 792 N.E.2d 1123, ¶ 4." *State ex rel. Rudolph v. Horton*, 119 Ohio St.3d 350, 351, 894 N.E.2d 49, 50 (Ohio,2008).

{¶5} Because Petitioner has or had an adequate remedy at law by way of direct appeal, the writ would not issue.

{¶6} MOTION TO DISMISS GRANTED.

{¶7} COMPLAINT DISMISSED.

{¶8} COSTS TO PETITIONER.

{¶9} IT IS SO ORDERED.

By Farmer, J.

Hoffman, P. J. and

Wise, J. concur.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ John W. Wise

JUDGES

SGF/as

