

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO ex rel.)	
DANIEL M. STAFFREY, SR.,)	
)	CASE NO. 09-MA-194
PLAINTIFF-RELATOR,)	
)	OPINION
VS.)	AND
)	JUDGMENT ENTRY
MAHONING COUNTY COURT OF)	
COMMON PLEAS,)	
)	
DEFENDANT-RESPONDENT.)	

CHARACTER OF PROCEEDINGS:	Petition for Writ of Mandamus/Procedendo
JUDGMENT:	Petition for Writ of Mandamus/Procedendo Dismissed
APPEARANCES: For Plaintiff-Relator	Attorney John D. Falgiani, Jr. 8256 E. Market St., Suite 116 P.O. Box 8533 Warren, Ohio 44484
For Defendant-Respondent	Ralph M. Rivera Assistant Prosecutor 21 W. Boardman St., 6 th Floor Youngstown, Ohio 44503-1426

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: February 16, 2010

PER CURIAM:

{¶1} Relator Daniel M. Staffrey, Sr., a prison inmate, has filed a petition for writ of mandamus and/or procedendo to compel the Mahoning County Court of Common Pleas to resentence him in accordance with the Ohio Supreme Court case of *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. The state has filed a combined answer and motion for judgment on the pleadings.

{¶2} In 1996, Staffrey pleaded guilty to rape, attempted aggravated murder, kidnapping, and aggravated burglary. The trial court sentenced Staffrey to ten to twenty-five years in prison on the counts of rape, kidnapping, and aggravated burglary. The court ordered the terms to be served concurrently. Additionally, the court imposed a five to twenty-five year sentence on the attempted aggravated murder count which was to be served consecutively with the ten to twenty-five year sentences. Staffrey appealed his sentence to this court and we affirmed. See *State v. Staffrey* (June 25, 1999), 7th Dist. No. 96 CA 246.

{¶3} On June 26, 2009, Staffrey filed in the trial court a “Motion to Withdraw Guilty Plea (Crim.R. 32.1), Motion for Resentencing, Request for Hearing.” According to Staffrey’s counsel and counsel for the state, the court held an in chambers status conference on the matter which yielded no resolution.

{¶4} On November 23, 2009, Staffrey filed the present petition for writ of mandamus and/or procedendo complaining that the trial court had failed to rule on his motion to resentence him pursuant to *Baker* and asking this court to compel the trial court to do so. Staffrey has not alleged what discrepancy exists between his sentencing entry and *Baker*’s holding.

{¶5} R.C. 2969.25(A) requires:

{¶6} “At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.”

{¶7} It is well recognized that failure to provide such affidavit constitutes sufficient grounds for dismissal of a petition for a writ of mandamus or procedendo.

State ex rel. Hawk v. Athens Cty., 106 Ohio St.3d 183, 2005-Ohio-4383, 833 N.E.2d 296; *State ex rel. Graham v. Niemeyer*, 106 Ohio St.3d 466, 2005-Ohio-5522, 835 N.E.2d 1250.

{¶8} Staffrey has filed a motion for leave to file the affidavit or, in the alternative, a motion to voluntarily dismiss the petition without prejudice. However, the Ohio Supreme Court has denied belated attempts to file documents required by R.C. 2969.25(A) in order to commence a civil action against a government entity or employee. *Fuqua v. Williams* (2003), 100 Ohio St.3d 211, at ¶9, 797 N.E.2d 982. In rejecting R.C. 2969.25(A) filings that are not submitted simultaneously with the petition, the Court pointed out that the particular section of the statute “requires that the affidavit be filed ‘[a]t the time that an inmate commences a civil action or appeal against a government entity or employee.’ (Emphasis added.)” *Id.* See, also, *Richards v. Eberlin*, 7th Dist. No. 04-BE-1, 2004-Ohio-2636.

{¶9} For the foregoing reasons, Staffrey’s petition for writ of mandamus and procedendo is denied.

{¶10} Costs taxed against Staffrey. Final order. Clerk to serve notice as provided by the Civil Rules.

Donofrio, J. concurs.

Waite, J. concurs.

DeGenaro, J. concurs.