

[Cite as *State ex rel. Rutledge v. Sheeran*, 2012-Ohio-1663.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

[State ex rel.] Wendell Rutledge, :
Relator, :
v. : No. 11AP-724
Judge Patrick E. Sheeran, : (REGULAR CALENDAR)
Respondent. :

D E C I S I O N

Rendered on April 12, 2012

Wendell Rutledge, pro se.

Ron O'Brien, Prosecuting Attorney, and Paul Thies, for respondent.

IN MANDAMUS
ON WRIT OF PROCEDENDO

BROWN, P.J.

{¶ 1} In this original action, relator, Wendell Rutledge, an inmate at the Madison Correctional Institution, requests that a writ of procedendo be issued against respondent, The Honorable Patrick Sheeran, a judge of the Franklin County Court of Common Pleas.

{¶ 2} This matter was referred to a magistrate of this court, pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued the appended decision, including findings of fact and conclusions of law, and recommended that this court dismiss the action based upon relator's failure to satisfy the requirements of R.C. 2969.25(A) and (C). No objections have been filed to that decision.

{¶ 3} As there have been no objections filed to the magistrate's decision, and it contains no error of law or other defect on its face, based on an independent review of the file, this court adopts the magistrate's decision. Relator's writ of procedendo is dismissed.

Writ of procedendo dismissed.

BRYANT and KLATT, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel.] Wendell Rutledge,	:	
Relator,	:	
v.	:	No. 11AP-724
Judge Patrick E. Sheeran,	:	(REGULAR CALENDAR)
Respondent.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on September 22, 2011

Wendell Rutledge, pro se.

Ron O'Brien, Prosecuting Attorney, for respondent.

IN PROCEDENDO
ON SUA SPONTE DISMISSAL

{¶ 4} In this original action, relator, Wendell Rutledge, an inmate of the Madison Correctional Institution ("MCI") requests that a writ of procedendo issue against respondent, The Honorable Patrick Sheeran, a Judge of the Franklin County Court of Common Pleas.

Findings of Fact:

{¶ 5} 1. On August 26, 2011, relator, an MCI inmate, filed this original action against respondent.

{¶ 6} 2. At the time of the filing of his complaint, relator also filed an affidavit of indigency executed August 15, 2011.

{¶ 7} 3. However, relator has not filed the R.C. 2969.25(C)(1) statement of the balance in his inmate account for each of the preceding six months as certified by the institutional cashier.

{¶ 8} 4. Relator has not filed the so-called prior actions affidavit required by R.C. 2969.25(A).

Conclusions of Law:

{¶ 9} It is the magistrate's decision that this court sua sponte dismiss this action for the failure of relator to satisfy the filing requirements imposed upon an inmate confined in a state correctional institution pursuant to R.C. 2969.25.

R.C. 2969.25 states in part:

(A) 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. * * *

* * *

(C) If an inmate who files a civil action or appeal against a government entity or employee seeks a waiver of the prepayment of the full filing fees assessed by the court in which the action or appeal is filed, the inmate shall file with the complaint or notice of appeal an affidavit that the inmate is seeking a waiver of the prepayment of the court's full filing fees and an affidavit of indigency. The affidavit of waiver and the affidavit of indigency shall contain all of the following:

(1) A statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier;

(2) A statement that sets forth all other cash and things of value owned by the inmate at that time.

{¶ 10} In *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, an inmate, Carlos J. Fuqua, filed in the Allen County Court of Appeals a petition for a writ of habeas corpus. He requested leave to proceed in forma pauperis but he did not file the affidavit

required by R.C. 2969.25(A) describing each civil action or appeal of a civil action that he had filed in the previous five years in any state or federal court.

{¶ 11} Fuqua's prison warden, Jesse J. Williams, moved to dismiss the petition.

{¶ 12} Fuqua requested leave in the court of appeals to amend his petition with the affidavit required by R.C. 2969.25(A).

{¶ 13} The court of appeals dismissed the petition for habeas corpus and Fuqua appealed as of right to the Supreme Court of Ohio.

{¶ 14} The Supreme Court of Ohio, in *Fuqua*, at ¶9, states:

* * * Fuqua's belated attempt to file the required affidavit does not excuse his non-compliance. See R.C. 2969.25(A), which 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.)

{¶ 15} In *Hawkins v. S. Ohio Correctional Facility*, 102 Ohio St.3d 299, 2004-Ohio-2893, an inmate, Jomo Hawkins, petitioned the Scioto County Court of Appeals for a writ of habeas corpus. However, Hawkins' petition did not contain the R.C. 2725.04(D) commitment papers, nor the affidavit required by R.C. 2969.25(A). Later, Hawkins filed an un-notarized statement purporting to be his R.C. 2969.25(A) affidavit.

{¶ 16} Following dismissal of his action, Hawkins appealed as of right to the Supreme Court of Ohio. Citing *Fuqua*, the *Hawkins* court affirmed the judgment of the court of appeals.

{¶ 17} Here, relator failed to satisfy the requirements of R.C. 2969.25(A) and (C) as of the date of the filing of his complaint.

{¶ 18} Accordingly, it is the magistrate's decision that this court sua sponte dismiss this action.

s/s Kenneth W. Macke
KENNETH W. MACKE
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).