

[Cite as *State ex rel. Johnson v. Sheeran*, 2013-Ohio-3626.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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| State ex rel. Alphonso Johnson, | : | |
| Relator, | : | |
| v. | : | No. 13AP-60 |
| The Honorable Judge Patrick E. Sheeran, | : | (REGULAR CALENDAR) |
| Respondent. | : | |

D E C I S I O N

Rendered on August 22, 2013

Alphonso Johnson, pro se.

IN MANDAMUS

BROWN, J.

{¶ 1} Relator, Alphonso Johnson, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, the Honorable Patrick E. Sheeran, judge of the Franklin County Court of Common Pleas, to rule on a motion to dismiss his indictment that he indicates he filed May 14, 2012.

{¶ 2} This matter was referred to a magistrate of this court pursuant to Civ.R. 53(C) and Loc.R. 13(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 relator's request for a writ of mandamus. 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 request for a writ of mandamus is dismissed.

Action dismissed.

KLATT, P.J., and T. BRYANT, J., concur.

T. BRYANT, J., retired of the Third Appellate District,
assigned to active duty under authority of Section 6(C), Article
IV, Ohio Constitution.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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|---------------------|---|--------------------|
| State ex rel. | : | |
| Alphonso Johnson, | : | |
| | : | |
| Relator, | : | No. 13AP-60 |
| | : | |
| v. | : | (REGULAR CALENDAR) |
| | : | |
| The Honorable Judge | : | |
| Patrick E. Sheeran, | : | |
| | : | |
| Respondent. | : | |

MAGISTRATE'S DECISION

Rendered on April 24, 2013

Alphonso Johnson, pro se.

**IN MANDAMUS
ON SUA SPONTE DISMISSAL**

{¶ 4} Relator, Alphonso Johnson, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, the Honorable Patrick E. Sheeran, judge of the Franklin County Court of Common Pleas, to rule on a motion to dismiss his indictment which relator indicates he filed May 14, 2012.

Findings of Fact:

{¶ 5} 1. Relator is an inmate currently incarcerated at Chillicothe Correctional Institution.

{¶ 6} 2. On January 23, 2013, relator filed the instant mandamus action alleging that respondent has not ruled on his motion to dismiss his indictment which remains pending.

{¶ 7} 3. At the time he filed this mandamus action, relator indicates that he has not filed any other civil actions against a governmental agency within the last five years.

{¶ 8} 4. Relator has not paid the filing fee nor has relator filed an affidavit of indigency seeking to waive the prepayment of the filing fee on the grounds of indigency and has not included a statement of the amount in his inmate account for the preceding six months as certified by the institutional cashier.

Conclusions of Law:

{¶ 9} In regard to filing fees, R.C. 2969.25(C) and 2969.22 distinguish between paying the full amount of filing fees upon filing (referred to as "prepayment" of fees) and paying the fees pursuant to periodic deductions from the inmate's account maintained by the prison.¹ Under R.C. 2969.25(C), an inmate who seeks waiver of prepayment on the grounds of indigency must file an affidavit that includes: (1) a statement of the amount in his inmate account for each of the preceding six months as certified by the institutional cashier; and (2) a statement of all other cash and things of value owned by the inmate.

{¶ 10} Compliance with the provisions of R.C. 2969.25 is mandatory and the failure to satisfy the statutory requirements is grounds for dismissal of the action. *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258 (1999); *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421 (1998); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285 (1997).

{¶ 11} In *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, the Ohio Supreme Court affirmed the judgment of the court of appeals from Medina County which had dismissed the complaint of George D. Pamer, an inmate at Mansfield Correctional Institution, for his failure to comply with the requirements of R.C. 2969.25(C). Specifically, the court stated:

* * * Pamer's cashier statement did not set forth the account balance for the month immediately preceding his mandamus

¹Under the statute, when the inmate has submitted the requisite affidavit of indigency, the clerk charges the inmate's account for funds in excess of ten dollars. Following that payment, all income in the inmate's account (excluding the \$10) is forwarded to the clerk each month until the fees are paid.

complaint--August 2005. See R.C. 2969.25(C)(1), which requires an inmate filing a civil action against a government employee seeking waiver of prepayment of court filing fees to file a "statement that sets forth the balance in the inmate account for each of the preceding six months, as certified by the institutional cashier." Pamer's failure to comply with R.C. 2969.25(C)(1) warranted dismissal of the complaint. *State ex rel. Foster v. Belmont Cty. Court of Common Pleas*, 107 Ohio St.3d 195, 2005-Ohio-6184, 837 N.E.2d 777, ¶ 5.

In addition, nothing in R.C. 2969.25 required the court of appeals to afford Pamer the opportunity to pay the requisite filing fee before dismissing the case when Pamer expressly requested waiver of prepayment of those fees.

Finally, because Pamer did not prevail and did not establish his indigency, the court of appeals did not abuse its discretion in ordering him to pay the costs of the proceeding. See *State ex rel. Frailey v. Wolfe* (2001), 92 Ohio St.3d 320, 321, 750 N.E.2d 164; Civ.R. 54(D).

Id. at ¶ 5-7.

{¶ 12} Because relator has failed to comply with the mandatory filing requirements of R.C. 2969.25(C), it is this magistrate's decision that this court should dismiss this action.

/S/ MAGISTRATE
STEPHANIE BISCA BROOKS

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).