

**IN THE
SUPREME COURT OF OHIO**

STATE OF OHIO EX REL. MINISTER KIMANI WARE	:	NO. 2022-0191
	:	
Appellant-Relator	:	
	:	ORIGINAL ACTION IN MANDAMUS
vs.	:	
	:	
AFTAB PUREVAL HAMILTON COUNTY CLERK OF COURTS	:	
	:	
Appellee-Respondent		

MERIT BRIEF OF APPELLEE-RESPONDENT

Joseph T. Deters (0012084P)
Hamilton County Prosecuting Attorney

Philip R. Cummings (0041497P)
Assistant Prosecuting Attorney

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3012
Fax No. (513) 946-3021
Phil.Cummings@hcpros.org

COUNSEL FOR APPELLEE-RESPONDENT, AFTAB PUREVAL

Kimani Ware #A470743
Trumbull Correctional Institution
5701 Burnett Road
Leavittsburg, Ohio 44430

APPELLANT-RELATOR, PRO SE

TABLE OF CONTENTS

	<u>PAGE</u>
<u>TABLE OF AUTHORITIES</u>	ii
<u>STATEMENT OF THE CASE</u>	1
<u>STATEMENT OF THE FACTS</u>	1
<u>ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW</u>	2
<u>PROPOSITION OF LAW: AN INMATE FAILS TO DEMONSTRATE A CLEAR LEGAL RIGHT TO COMPEL PRODUCTION OF DOCUMENTS WHEN HE FAILS TO USE THE CORRECT VEHICLE TO REQUEST THE DOCUMENTS AND FAILS TO OBTAIN A JUDICIAL FINDING PURSUANT TO R.C. 149.43(B)</u>	
[IN RESPONSE TO RELATOR’S PROPOSITIONS OF LAW 1-3]	
<u>PROOF OF SERVICE</u>	4

TABLE OF AUTHORITIES

PAGE

CASES:

State ex rel. Gilbert v. Cincinnati, 125 Ohio St.3d 385, 2010-Ohio-1473, 928 N.E.2d 706..... 2

State ex rel. Parisi v. Dayton Bar Assn. Certified Grievance Committee, 159 Ohio St.3d 211,
2019-Ohio-5157, 150 N.E.3d 43..... 2

State ex rel. Ware v. Giavasis, 160 Ohio St.3d 383, 2020-Ohio-3700, 157 N.E.3d 710,
2020 Ohio LEXIS 1632 3

State ex rel. Ware v. Giavasis, 163 Ohio St.3d 359, 2020-Ohio-5453, 170 N.E.3d 788..... 2-3

State ex rel. Ware v. Kurt, 2022-Ohio-1627, 2022 LEXIS 983 2-3

STATUTES:

R.C. 149.43 1-3

R.C. 149.43(B) 2

R.C. 149.43(B)(8) 3

R.C. 149.43(C)(2) 3

RULES:

Civ. R. 55(D)..... 2

Sup.R. 44 through 47 2

STATEMENT OF THE CASE

Kimani Ware is incarcerated at the Trumbull Correctional on multiple counts including attempted murder, kidnapping, rape and felonious assault. In January 2021, he claims he sent public-records requests by certified mail to Respondent.¹ All requests were pursuant to R.C. 149.43. On February 22, 2022, Ware filed this complaint for a writ of mandamus to compel Respondent to produce the requested documents.

STATEMENT OF THE FACTS

REQUESTED DOCUMENTS:

Ware requested the oaths of office of (1) Charles J. Kubicki, (2) Lisa C. Allen and (3) Thomas O. Beridon. He also requested documents from case number C-010153. These documents included the docket sheet, writ of mandamus complaint, motion to dismiss and judgment filed on July 27, 2001. Ware made all requests pursuant to R.C. 149.43, Ohio's Public Records Act.

¹ Respondent could not locate any record of the certified mail delivery.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW: AN INMATE FAILS TO DEMONSTRATE A CLEAR LEGAL RIGHT TO COMPEL PRODUCTION OF DOCUMENTS WHEN HE FAILS TO USE THE CORRECT VEHICLE TO REQUEST THE DOCUMENTS AND FAILS TO OBTAIN A JUDICIAL FINDING PURSUANT TO R.C. 149.43(B).

[IN RESPONSE TO RELATOR’S PROPOSITIONS OF LAW 1-3]

To be entitled to a writ of mandamus, relator must establish the following: (1) a clear legal right to compel the respondent to commence a certain action; (2) a corresponding clear legal duty on the part of respondent to institute that action; and (3) the lack of a remedy in the ordinary course of law. *State ex rel. Gilbert v. Cincinnati*, 125 Ohio St.3d 385, 2010-Ohio-1473, 928 N.E.2d 706, ¶ 15. Here, Relator failed to do so. Accordingly, he was not entitled to a writ of mandamus or a default judgment. *Id.*; Civ. R. 55(D).

Public records can be requested using two different vehicles: R.C. 149.43 or Sup.R. 44 through 47. The Ohio Public Records Act, R.C. 149.43, governs criminal case records for actions initiated prior to July 1, 2009. The Ohio Rules of Superintendence, Sup.R. 44 through 47, govern requests for court records concerning the operation and administration of the courts. This Court has held the “vehicle used dictates not only the documents that are available to the relator and the manner in which they are available but also the remedies available to the relator should the relator be successful.” *State ex rel. Parisi v. Dayton Bar Assn. Certified Grievance Committee*, 159 Ohio St.3d 211, 2019-Ohio-5157, 150 N.E.3d 43. If a Realtor requested documents using the wrong vehicle he is not entitled to the records. *Id.* Ware used the wrong vehicle.

Here, Ware’s requests for the oaths fell within the scope of Sup.R. 44 through 47. *See State ex rel. Ware v. Kurt*, 2022-Ohio-1627, 2022 LEXIS 983; *State ex rel. Ware v. Giavasis*, 163 Ohio St.3d 359, 2020-Ohio-5453, 170 N.E.3d 788. Because Ware’s request for the oaths was

pursuant to the Public Record Act, he was not entitled to the records and his complaint for mandamus as to the oaths is properly dismissed. *Id.*

The Ohio Public Record Act, R.C. 149.43, governed Ware's request for documents from case number C-010153 because that request dealt with criminal case records for a case initiated prior to July 1, 2009. But R.C. 149.43(B)(8) limits the right of inmates to access certain records. When a person is incarcerated, like Ware, and that person requests public records from a case, the sentencing judge, or his successor, must authorize the release of the records.² This provision requires the sentencing court to first determine that the information sought in the public record is necessary to support a justiciable claim. As Ware has not obtained a finding from his judge, he cannot demonstrate a clear legal right to compel Respondent to produce these case documents. Again, the complaint for mandamus is properly dismissed. *State ex rel. Ware v. Kurt*, supra.

Moreover, Ware is not entitled to statutory damages or costs.

A person requesting public records "shall" be entitled to recover an award of statutory damages "if a court determines that the public office or the person responsible for the public records failed to comply with an obligation in accordance with [R.C. 149.43(B)]." R.C. 149.43(C)(2). Because Respondent had no obligation to provide the requested records, he is not entitled to damages. *State ex rel. Ware v. Giavasis*, 160 Ohio St.3d 383, 2020-Ohio-3700, 157 N.E.3d 710, 2020 Ohio LEXIS 1632. Ware's petition is properly denied.

² A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction * * * to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution * * *, 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 * * * 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. R.C. 149.43(B)(8).

Respectfully,

Joseph T. Deters, 0012084P
Hamilton County Prosecuting Attorney

/s/Philip R. Cummings

Philip R. Cummings, 0041497P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: (513) 946-3012
Phil.Cummings@hcpros.org

Attorneys for Appellee-Respondent

PROOF OF SERVICE

I hereby certify that I have sent a copy of the foregoing Merit Brief, by United States mail, addressed to Kimani Ware, Pro se, Inst. #A470743, Trumbull Correctional Institution, 5701 Burnett Road, Leavittsburg, Ohio 44430, this 4th day of August, 2022.

/s/Philip R. Cummings

Philip R. Cummings, 0041497P
Assistant Prosecuting Attorney