



[Cite as *State ex rel. Young v. Miday*, 2018-Ohio-1622.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106781

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STATE OF OHIO, EX REL.  
GEORGE R. YOUNG

RELATOR

vs.

JUDGE SHERRIE M. MIDAY

RESPONDENT

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**JUDGMENT:**  
WRIT DENIED

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Writ of Mandamus  
Motion No. 514914  
Order No. 516203

**RELEASE DATE:** April 25, 2018

## **FOR RELATOR**

George R. Young, pro se  
Inmate No. 640832  
Warren Correctional Institution  
P.O. Box 120  
Lebanon, Ohio 45036

## **ATTORNEYS FOR RESPONDENT**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
By: James E. Moss  
Assistant County Prosecutor  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

TIM McCORMACK, J.:

{¶1} George R. Young has filed a complaint for a writ of mandamus. Young seeks an order from this court that requires Judge Sherrie M. Miday to issue rulings with regard to three motions that were filed in *State v. Young*, Cuyahoga C.P. No. CR-13-573242.<sup>1</sup> Judge Miday has filed a motion for summary judgment that is granted for the following reasons.

{¶2} Young argues that Judge Miday is required to issue rulings with regard to three motions filed in CR-13-573242: 1) motion for dismissal of charges for denial of speedy trial, filed pro se on April 17, 2014; 2) motion to dismiss for failure to commence a prosecution, filed by counsel on February 26, 2016; and 3) motion to dismiss based upon trial court's lack of subject-matter jurisdiction, judicial misconduct, and denial of due process, attorney misconduct,

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<sup>1</sup>Pursuant to Civ.R. 25(D)(1), Judge Sherrie M. Miday is substituted for the judge that was originally assigned to preside over Cuyahoga C.P. No. CR-13-573242.

prosecutorial misconduct, and trial court abused discretion, filed pro se on May 11, 2016. The motions filed on April 17, 2014, and May 11, 2016, were filed pro se by Young while represented by counsel. The docket maintained in CR-13-573242 demonstrates that on April 17, 2014, Young was represented by attorney Donald Butler, and on May 11, 2016, Young was represented by attorney John F. Corrigan.

{¶3} A defendant cannot act as co-counsel in a case where he has counsel. It is well established that although a defendant possesses the right to counsel or the right to act pro se, a defendant possesses no right to hybrid representation. *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227; *State v. Thompson*, 33 Ohio St.3d 1, 514 N.E.2d 407 (1987). As a result, when counsel represents a criminal defendant, a trial court may not entertain a defendant's pro se motion. *State v. Washington*, 8th Dist. Cuyahoga Nos. 96565 and 96568, 2012-Ohio-1531. Thus, Judge Miday possesses no duty to render any rulings with regard to the pro se motions filed on April 17, 2014, and May 11, 2016.

{¶4} In addition, a review of the docket in CR-13-573242 demonstrates that the motion filed on February 26, 2016, that dealt with a dismissal motion premised upon the failure to commence a timely prosecution, was denied on April 12, 2016. "[R]elief is unwarranted because mandamus \* \* \* will not compel the performance of a duty that has already been performed." *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49, ¶ 4.

{¶5} Finally, Young's complaint for a writ of mandamus is procedurally defective because he has failed to comply with R.C. 2969.25(A) and 2969.25(C). Pursuant to R.C. 2969.25(A), an inmate that commences a civil action against a government entity or employee

must file a sworn affidavit that contains a description of each civil action or appeal of a civil action filed in the previous five years in any state or federal court. *State ex rel. McGrath v. McDonnell*, 126 Ohio St.3d 511, 2010-Ohio-4726, 935 N.E.2d 830. R.C. 2969.25(C)(1) requires that Young file a statement setting forth his inmate account balance “for each of the preceding six months as certified by the institutional cashier.”

{¶6} Young has failed to provide this court with a notarized affidavit that describes previously filed civil actions. Young has also failed to provide this court with a certified statement setting forth the balance in his inmate account. *Freed v. Bova*, 8th Dist. Cuyahoga No. 99908, 2013-Ohio-4378; *Turner v. Russo*, 8th Dist. Cuyahoga No. 87852, 2006-Ohio-4490. It must also be noted that the failure to comply with the mandatory requirements of R.C. 2969.25(A) and 2969.25(C) cannot be cured through amendment of the original complaint. *State ex rel. Swain v. Ohio Adult Parole Auth.*, 151 Ohio St.3d 552, 2017-Ohio-9175, 90 N.E.3d 936; *Fugua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982.

{¶7} Accordingly, we grant Judge Miday’s motion for summary judgment. Costs to Young. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶8} Writ denied.

TIM McCORMACK, JUDGE

EILEEN A. GALLAGHER, A.J., and  
ANITA LASTER MAYS, J., CONCUR

