

SUPREME COURT OF OHIO

State ex rel. Ellis v. Cleveland Police Forensic Laboratory

2019-Ohio-4201 (Ohio 2019) · No. 2019-0398 · Decided October 16, 2019

SUMMARY

The Supreme Court of Ohio held that, under R.C. 149.43(B)(8), a public-records custodian has no clear legal duty to produce records concerning a criminal investigation or prosecution requested by an incarcerated person who did not obtain a judicial finding that the records were necessary to support an apparently justiciable claim. The court affirmed denial of the writ as to those records and remanded for resolution of the incarcerated person's pending motion for statutory damages concerning other records.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, C.J.
JURISDICTION	Ohio
DECIDED	October 16, 2019
DOCKET	2019-0398
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ellis appealed as of right from the Eighth District Court of Appeals' judgment in a public-records mandamus action. The court of appeals granted a writ for some records, denied it for records concerning a criminal investigation or prosecution, and left pending Ellis's motion for statutory damages.
STANDARD OF REVIEW	The Supreme Court reviewed the legal applicability of R.C. 149.43(B)(8) to Ellis's records request and affirmed the mandamus judgment. The court declined to dismiss as moot because the record did not clearly demonstrate mootness.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential
PARTIES	L'Ddaryl Ellis v. Cleveland Police Forensic Laboratory

TOPICS

writ of certiorari

statutory interpretation

appellate procedure

remedies

criminal procedure

PRACTICE AREAS

public records

mandamus

criminal procedure

statutory interpretation

remedies

QUESTIONS PRESENTED

1. Whether R.C. 149.43(B)(8) required Ellis, an incarcerated person, to obtain court approval before requesting public records concerning a criminal investigation or prosecution.
2. Whether Crim.R. 16(H), rather than R.C. 149.43(B)(8), governed Ellis's public-records request.
3. Whether the appeal should be dismissed as moot because the laboratory had supplied at least some requested records.
4. Whether the cause should be remanded for resolution of Ellis's pending motion for statutory damages.

HOLDINGS

1. R.C. 149.43(B)(8) applied because Ellis was incarcerated and the first part of his request sought public records concerning a criminal investigation or prosecution. Because he did not obtain the required finding from the sentencing or adjudicating judge that the records were necessary to support what appeared to be a justiciable claim, the Cleveland Police Forensic Laboratory had no clear legal duty to produce those records.
2. Crim.R. 16(H) did not displace R.C. 149.43(B)(8) and did not provide an independent basis for accessing public records.
3. The court would not dismiss the appeal as moot because the record did not clearly demonstrate that all responsive records had been provided.

KEY QUOTATIONS

“Because he did not obtain court approval as the statute requires, CPFL had no clear legal duty to produce the records identified in the first part of his request.” (§ 12)

“And contrary to what Ellis suggests, Crim.R. 16(H) does not provide an independent basis for accessing public records. It merely explains how a request for public records may affect a defendant’s discovery obligations in a criminal case.” (§ 11)

FACTUAL BACKGROUND

In June 2018, incarcerated person L’Ddaryl Ellis requested investigative, laboratory, hospital, scientific-testing, and related records from the Cleveland Police Forensic Laboratory, including a report concerning a specified firearm, as well as the laboratory's records-retention and public-records policies. He later filed a mandamus action alleging that the laboratory had not responded. The laboratory supplied the requested lab report and, after the court of appeals ordered production, supplied the policy and retention records.

PROCEDURAL HISTORY

Ellis requested public records from the Cleveland Police Forensic Laboratory and then filed a mandamus action after alleging that the laboratory had not responded. The Eighth District granted the writ in part and denied it in

part, concluding that Ellis had not obtained the court approval required by R.C. 149.43(B)(8) for records concerning a criminal investigation or prosecution. After the laboratory produced the records-retention and public-records policies, Ellis moved for statutory damages; he appealed before that motion was resolved. The Supreme Court of Ohio affirmed and remanded for resolution of the pending statutory-damages motion.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remand the cause to the court of appeals for resolution of Ellis's pending motion for statutory damages under R.C. 149.43(C)(2).

CASES CITED

- State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth., 121 Ohio St.3d 537, 2009-Ohio-1767, 905 N.E.2d 1221, ¶ 14
- State ex rel. Russell v. Thornton, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 14
- State ex rel. Caster v. Columbus, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 38

OPINION

PER CURIAM.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Ellis v. Cleveland Police Forensic Laboratory, Slip Opinion No. 2019-Ohio-4201.] NOTICE This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2019-OHIO-4201 THE STATE EX REL. ELLIS, APPELLANT, v. CLEVELAND POLICE FORENSIC LABORATORY, APPELLEE. [Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Ellis v. Cleveland Police Forensic Laboratory, Slip Opinion No. 2019-Ohio-4201.] Mandamus—Public records—R.C. 149.43(B)(8)—The custodian of a public record has no clear legal duty to produce a record requested by an incarcerated person who failed to request a finding that the record is necessary to support what appears to be a justiciable claim of the incarcerated person— Denial of writ affirmed but cause remanded for resolution of a motion for statutory damages.

(No. 2019-0398—Submitted July 9, 2019—Decided October 16, 2019.) APPEAL from the Court of Appeals for Cuyahoga County, No. 107571, 2019-Ohio-710. _____ SUPREME

COURT OF OHIO Per Curiam. {¶ 1} Appellant, L'Ddaryl Ellis, a prison inmate, filed an action in the Eighth District Court of Appeals seeking a writ of mandamus to compel appellee, Cleveland Police Forensic Laboratory ("CPFL"), to provide public records he had requested.

The court of appeals granted the writ concerning certain records but denied the writ concerning others. Ellis has appealed to this court as a matter of right. We affirm. Background {¶ 2} In June 2018, Ellis requested the following records from CPFL: (1) All Investigative Reports, All Laboratory or Hospital Reports, books, papers, documents, photographs, tangible object, buildings, or places, All Scientific Tests, any memorandum, memo notes, emails etc...

(Police, Detective, Witness and Victim Statements & Reports. Ballistic Test of the following weapon: Skyy 9mm caliber pistol, Model CPX-1, with serial #018313. (2) Copies of all Records Retention Schedule, Records Retention Policy, and Public Records Policy.

The request also referred to "Lab Report No. 2012-001569." {¶ 3} In August 2018, Ellis filed a mandamus action in the Eighth District alleging that CPFL had not responded to his request. In addition to seeking an order compelling CPFL to provide the requested records, Ellis sought statutory damages under R.C. 149.43(C)(2). {¶ 4} CPFL moved for summary judgment.

In his response to CPFL's motion, Ellis disclosed that CPFL had provided a copy of the lab report, but he argued that CPFL still had not fully responded to his request. Among other things, he noted that CPFL had not given him a copy of a records-retention schedule, records- retention policy, or public-records policy. 2 January Term, 2019 {¶ 5} The court of appeals determined that the first part of Ellis's request was extremely vague and overly broad and that Ellis had not obtained court approval before requesting public records concerning a criminal investigation or prosecution, as he was required to do under R.C.

149.43(B)(8). The court therefore denied the writ as to the first part of Ellis's request. But the court noted that R.C. 149.43(B)(8) did not apply to the second part of Ellis's request, which did not seek records concerning a criminal investigation or prosecution.

Because CPFL had not responded to that part of the request, either by producing the documents or by showing that no responsive documents exist, the court granted the writ in part. {¶ 6} In response to the court's order, CPFL provided a records-retention schedule, a records-retention policy, and a public-records policy to Ellis. At the court of appeals' invitation, Ellis filed a motion for statutory damages based on CPFL's failure to timely produce those records.

Because the court of appeals had determined under Civ.R. 54(B) that there was no just reason for delay, Ellis appealed to this court while his statutory-damages motion remained pending. Analysis {¶ 7} Ellis challenges the court of appeals' determination that he was required, under R.C. 149.43(B)(8), to obtain court approval before requesting records concerning a criminal investigation or prosecution.

There is some indication in the record that this claim may be moot, because Ellis acknowledged that CPFL gave him a copy of the report he requested and it is unclear that additional responsive records exist. See *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth.*, 121 Ohio St.3d 537, 2009-Ohio-1767, 905 N.E.2d 1221, ¶ 14 (“In general, providing the requested records to the relator in a public-records mandamus case renders the mandamus claim moot”).

CPFL, however, did not file a brief in this appeal, never argued that Ellis’s claim is moot, and presented no evidence verifying that it has provided all responsive documents. Thus, in the 3 SUPREME COURT OF OHIO absence of a record clearly demonstrating mootness, we will address the merit of Ellis’s appeal. {¶ 8} R.C. 149.43(B)(8) provides: 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 or made the adjudication 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. {¶ 9} “The language of the statute is broad and encompassing” and “clearly sets forth heightened requirements for inmates seeking public records.” (Emphasis sic.)

State ex rel. Russell v. Thornton, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 14 (involving former R.C. 149.43(B)(4), now R.C. 149.43(B)(8)). Because Ellis does not dispute that the first part of his request sought public records concerning a criminal investigation or prosecution, R.C. 149.43(B)(8) plainly applied. {¶ 10} But, relying on *State ex rel.*

Caster v. Columbus, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 38, Ellis argues that Crim.R. 16(H)—not R.C. 149.43(B)(8)—governed his request. Crim.R. 16(H) provides that “[a] public records request made by the defendant, directly or indirectly, shall be treated as a 4 January Term, 2019 demand for discovery in a criminal case if, and only if, the request is made to an agency involved in the prosecution or investigation of that case.” {¶ 11} Ellis misapprehends both *Caster* and Crim.R.

16(H). The issue in *Caster* was whether the specific-investigatory-work-product exception (R.C. 149.43(A)(2)(c)) applies after an underlying criminal case has concluded. *Caster* at ¶ 1. *Caster* did not involve the obligation of an incarcerated person to comply with R.C. 149.43(B)(8). And contrary to what Ellis suggests, Crim.R. 16(H) does not provide an independent basis for accessing public records.

It merely explains how a request for public records may affect a defendant’s discovery obligations in a criminal case. {¶ 12} Ellis, therefore, had to comply with R.C. 149.43(B)(8). Because he did

not obtain court approval as the statute requires, CPFL had no clear legal duty to produce the records identified in the first part of his request.

We therefore affirm the judgment of the court of appeals and remand the cause for resolution of Ellis's pending motion for statutory damages. Judgment affirmed and cause remanded. O'CONNOR, C.J., and KENNEDY, FRENCH, FISCHER, DEWINE, DONNELLY, and STEWART, JJ., concur. _____ L'Ddaryl Ellis, pro se.