

SUPREME COURT OF OHIO

State ex rel. Capron v. Dattilio

2016-Ohio-1504 (Ohio 2016) · No. 2015-1082 · Decided April 13, 2016

SUMMARY

The Supreme Court of Ohio affirmed the dismissal of a mandamus action seeking to compel a clerk of courts to accept a criminal affidavit and a prosecutor to pursue a perjury charge. The court held that the clerk had no clear duty to accept the affidavit and that the prosecutor's decision not to prosecute was discretionary and was not shown to constitute an abuse of discretion.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, Chief Justice; Paul E. Pfeifer, Justice; William M. O'Donnell, Justice; Evelyn Lundberg Stratton Lanzinger, Justice; Judy French, Justice; Patrick F. Fischer Kennedy, Justice; William M. O'Neill, Justice
JURISDICTION	Ohio
DECIDED	April 13, 2016
DOCKET	2015-1082
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Seventh District Court of Appeals' dismissal of a complaint seeking a writ of mandamus.
STANDARD OF REVIEW	To obtain a writ of mandamus, the relator must establish by clear and convincing evidence a clear legal right to the requested relief, a clear legal duty on the respondent to provide it, and the absence of an adequate remedy in the ordinary course of law.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.
PARTIES	John F. Capron III v. Anthony J. Dattilio, Clerk, Robert L. Herron, Columbiana County Prosecutor

TOPICS

civil procedure

remedies

statutory interpretation

criminal procedure

PRACTICE AREAS

Mandamus

Ohio criminal procedure

Prosecutorial discretion

Statutory interpretation

QUESTIONS PRESENTED

1. Whether a private citizen has a clear legal right to compel a clerk of courts to accept for filing an affidavit alleging a criminal offense.
2. Whether a prosecutor has a clear legal duty to prosecute an alleged crime when the prosecutor determines that the factual basis is insufficient.
3. Whether Capron was entitled to a writ of mandamus compelling the requested filing and prosecution.

HOLDINGS

1. A private citizen may file an affidavit alleging a criminal offense under R.C. 2935.09(D), but the statute does not create a clear legal duty requiring the clerk to accept the affidavit for filing; R.C. 2935.09(D) must be read in pari materia with R.C. 2935.10(A).
2. A prosecutor has no clear legal duty to prosecute a crime alleged in a private affidavit; the decision whether to prosecute is generally discretionary and is subject to mandamus only when the failure to prosecute constitutes an abuse of discretion.
3. Capron was not entitled to a writ of mandamus because he failed to establish a clear legal right to the requested relief or clear legal duties on the part of the respondents.

KEY QUOTATIONS

“To be entitled to a writ of mandamus, Capron must establish a clear legal right to the requested relief, a clear legal duty on the part of respondents to provide it, and the lack of an adequate remedy in the ordinary course of the law.” (¶ 2)

“Prosecutors have wide discretion in deciding whether to prosecute a particular matter.” (¶ 4)

“Thus, the clerk had no clear duty to accept Capron’s affidavit for filing, the prosecutor had no clear duty to prosecute the alleged crime, and Capron has no clear legal right to a prosecution.” (¶ 6)

FACTUAL BACKGROUND

Capron attempted to have the Columbiana County clerk of courts accept an affidavit alleging that a named individual had committed perjury. The county prosecutor determined that there was an insufficient basis to file a criminal charge and declined to prosecute. Capron then sought a writ of mandamus compelling both the clerk to accept the affidavit and the prosecutor to prosecute.

PROCEDURAL HISTORY

Capron sought mandamus relief compelling the Columbiana County clerk of courts to accept for filing an affidavit alleging perjury and compelling the county prosecutor to prosecute the alleged offense. The Seventh District Court of Appeals dismissed the complaint, and the Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Waters v. Spaeth, 131 Ohio St. 3d 55, 2012-Ohio-69, 960 N.E.2d 452
- State ex rel. Strothers v. Turner, 79 Ohio St. 3d 272, 273, 680 N.E.2d 1238 (1997)
- State ex rel. Evans v. Columbus Dept. of Law, 83 Ohio St. 3d 174, 175, 699 N.E.2d 60 (1998)
- State ex rel. Master v. Cleveland, 75 Ohio St. 3d 23, 27, 661 N.E.2d 180 (1996)
- Brown v. Best Prods., Inc., 18 Ohio St. 3d 32, 35, 479 N.E.2d 852 (1985)
- State ex rel. Murr v. Meyer, 34 Ohio St. 3d 46, 516 N.E.2d 234 (1987)
- State ex rel. Squire v. Taft, 69 Ohio St. 3d 365, 368, 632 N.E.2d 883 (1994)

OPINION

PER CURIAM.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Capron v. Dattilio, Slip Opinion No. 2016-Ohio-1504.] 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. 2016-OHIO-1504 THE STATE EX REL. CAPRON, APPELLANT, v. DATTILIO, CLERK, ET AL., APPELLEES. [Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Capron v. Dattilio, Slip Opinion No. 2016-Ohio-1504.] Mandamus—Public officials—Prosecutor did not abuse discretion in choosing not to prosecute alleged crime—Court of appeals’ dismissal of complaint affirmed.

(No. 2015-1082—Submitted January 26, 2016—Decided April 13, 2016.) APPEAL from the Court of Appeals for Columbiana County, No. 2015 CO 00008, 2015-Ohio-1900. _____ Per Curiam. {¶ 1} We affirm the Seventh District Court of Appeals’ dismissal of relator- appellant, John F. Capron III’s complaint seeking a writ of mandamus compelling respondents-appellees, Anthony J. Dattilio, the Columbiana County clerk of courts, SUPREME COURT OF OHIO and Robert L. Herron, the Columbiana County prosecutor, to accept for filing an affidavit alleging a criminal offense and to prosecute a named individual for perjury. {¶ 2} To be entitled to a writ of mandamus, Capron must establish a clear legal right to the requested relief, a clear legal duty on the part of respondents to provide it, and the lack of an adequate remedy in the ordinary course of the law.

State ex rel. Waters v. Spaeth, 131 Ohio St. 3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6. Capron must prove entitlement to the writ by clear and convincing evidence. Id. at ¶ 13. {¶ 3} R.C. 2935.09(D) allows a private citizen to file an affidavit alleging a criminal offense, but the statute does not mandate that the clerk of court accept the affidavit for filing.

Rather, R.C. 2935.09(D) must be read in pari materia with R.C. 2935.10(A), which requires the clerk to either issue a warrant for the alleged offender's arrest or refer the matter to the prosecutor for investigation. State ex rel. Strothers v. Turner, 79 Ohio St. 3d 272, 273, 680 N.E.2d 1238 (1997). {¶ 4} Likewise, a prosecutor has no clear duty to prosecute a crime alleged in an affidavit.

State ex rel. Evans v. Columbus Dept. of Law, 83 Ohio St. 3d 174, 175, 699 N.E.2d 60 (1998). Prosecutors have wide discretion in deciding whether to prosecute a particular matter. State ex rel. Master v. Cleveland, 75 Ohio St. 3d 23, 27, 661 N.E.2d 180 (1996) ("the decision whether to prosecute is discretionary, and not generally subject to judicial review"); Brown v. Best Prods., Inc., 18 Ohio St.3d 32, 35, 479 N.E.2d 852 (1985) (the decision whether to pursue criminal charges is ultimately vested in the state, not with a private citizen).

Only when the failure to prosecute constitutes an abuse of discretion will a prosecutor be compelled to prosecute. State ex rel. Murr v. Meyer, 34 Ohio St. 3d 46, 516 N.E.2d 234 (1987); State ex rel. Squire v. Taft, 69 Ohio St. 3d 365, 368, 632 N.E.2d 883 (1994). 2 January Term, 2016 {¶ 5} The prosecutor here decided that there was an insufficient basis to justify filing a criminal charge.

Capron has not shown that the failure to prosecute in this case was an abuse of the prosecutor's wide discretion. {¶ 6} Thus, the clerk had no clear duty to accept Capron's affidavit for filing, the prosecutor had no clear duty to prosecute the alleged crime, and Capron has no clear legal right to a prosecution.

The court of appeals correctly dismissed Capron's complaint in mandamus, and we affirm. Judgment affirmed. O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, KENNEDY, FRENCH, and O'NEILL, JJ., concur. _____ John F. Capron II, pro se. Robert L. Herron, Columbiana County Prosecuting Attorney, and Andrew A. Beech, Assistant Prosecuting Attorney, for appellees. _____ 3