

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED,
DETERMINED**

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

JAVONEY D. ROBERTS,
Petitioner,

v.

Ref. No.: 19-000012-AP
UCN: 522019AP000012XXXXCI

KEN BURKE, CLERK OF COURT,
Respondent.
_____ /

ORDER AND OPINION

Petitioner files this Petition for Writ of Mandamus challenging the Clerk of Court's refusal to file his small claims complaint. For the reasons set forth below, the Petition is denied.

Facts and Procedural History

On December 17, 2018, Petitioner submitted a "statement of claims lawsuit along with [a] summons/notice to appear for pretrial conference mediation court hearing" to the Clerk. Petitioner also submitted an affidavit to determine indigent status. On January 8, 2019, after judicial review of the claim and indigency affidavit, the Court found first, that Petitioner was indigent, however, subsequently found that "Plaintiff/Petitioner's claim is frivolous, malicious, or reasonably appears to be intended to harass one or more named defendants/respondents and Plaintiff/Petitioner's claim is dismissed." Accordingly, the Clerk did not assign Petitioner's claim a case number nor proceeded with filing the claim. Thereafter, Petitioner filed the instant Petition.

Discussion

Mandamus is a common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputably ministerial duty required by law. It may only be granted if there is a

clear legal obligation to perform a duty in a prescribed manner. A duty or act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.

Austin v. Crosby, 866 So. 2d 742, 744 (Fla. 5th DCA 2004) (internal citations omitted).

Petitioner alleges that the Clerk had a ministerial duty to file his complaint and notice to appear, and as such, that it was improper for the Clerk to refuse to file his claim.

The Court finds that Petitioner is not entitled to mandamus relief. The Court finds that the January 8, 2019 Order issued dismissing Petitioner's claims was issued pursuant to Administrative Order 2005-01. Administrative Order 2005-01 was created to comply with Section 57.085, Florida Statutes. "Section 57.085 attempts to solve the problem of frivolous civil suits by indigent prison inmates by requiring that lawsuits brought by indigent inmates be screened by the court *before being accepted for filing*." *Craft v. Holloway*, 975 So. 2d 620, 621 (Fla. 4th DCA 2008) (emphasis added).

The Court finds that the Clerk properly carried out its ministerial duty by following the determinations made in the court's January 8, 2019 Order. The Court finds the Clerk had no discretion as to whether or not to file Petitioner's claims. The January 8, 2019 Order directed that the claim be dismissed pursuant to the pre-screening procedures, which makes determinations about whether or not the lawsuits should be accepted for filing.

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Conclusion

Because the Clerk carried out its ministerial duty by properly complying with the court's January 8, 2019 order when it denied acceptance of Petitioner's claims for filing, it is

ORDERED AND ADJUDGED that Petitioner's Petition for Writ of Mandamus is **DENIED**.

DONE AND ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida, on this ____ day of _____, 2019.

Original Order entered on December 10, 2019, by Circuit Judges Pamela A.M. Campbell, Amy M. Williams, and Linda R. Allen.

Copies furnished to:

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