

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 CA 1138

GLEN WELCH

VERSUS

DOUG MOREAU, DISTRICT ATTORNEY'S OFFICE,
EAST BATON ROUGE PARISH

Judgment Rendered: February 8, 2008.

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On Appeal from the
19th Judicial District Court,
in and for the Parish of East Baton Rouge
State of Louisiana
District Court No. 482,182

The Honorable R. Michael Caldwell, Judge Presiding

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Glen Welch
Angola, La.

Plaintiff/Appellant,
In Proper Person

Douglas Moreau
District Attorney
Baton Rouge, La.

Counsel for Defendant/Appellee,
District Attorney's Office,
East Baton Rouge Parish

Cliff Wilkerson
Assistant District Attorney

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BEFORE: CARTER, C.J., PETTIGREW AND WELCH, JJ.

AG
J.P.
JEW

CARTER, C.J.

Plaintiff/Appellant, Glen Welch, an inmate in the custody of the Louisiana Department of Public Safety and Corrections, appeals the Nineteenth Judicial District Court judgment dismissing, with prejudice, his petition for writ of mandamus. We affirm.

Plaintiff was convicted under criminal docket number 2-96-453. His sentences and convictions were affirmed in **State v. Welch**, 98-0944 (La. App. 1 Cir. 2/19/99), 738 So.2d 201, writ denied, 99-0836 (La. 9/3/99), 747 So.2d 535. Plaintiff alleges he sent a written public records request to the district attorney in December 1999, seeking a copy of the district attorney's file. Receiving no response, plaintiff filed a motion for production in his criminal proceeding, which was denied. See La. Code Cr. P. art. 822B.

Plaintiff filed the present petition for writ of mandamus on March 13, 2001, seeking to compel the district attorney to provide him with a copy of the district attorney's file pursuant to La. R.S. 44:1, et seq., the Public Records Act. A pauper order and an order for service of process on the district attorney were signed on April 30, 2001. The record reflects no further activity until December 1, 2004, at which time plaintiff filed a motion and order to compel an answer from the district attorney. On January 24, 2006, the district court signed a judgment dismissing plaintiff's suit for failing to state a cause of action.

There is nothing in the record to support plaintiff's claim that the district attorney received notice of the public records request

prior to this civil proceeding being instituted.¹ It is only after a person “has been denied the right to inspect or copy a record” under the Public Records Act that the person “may institute proceedings for the issuance of a writ of mandamus.” La. R.S. 44:35A; see also La. R.S. 44:31.1 (An inmate in custody after sentencing following a felony conviction, who has exhausted his appellate remedies, is a “person” permitted access to a public record only when his request is limited to the grounds upon which the inmate could file for post conviction relief under La. Code Crim. P. art. 930.3.).

Moreover, the district attorney established that it no longer has an office file for criminal docket number 2-96-453. The office file was “dead filed” in 1997 and later destroyed in accordance with La. R.S. 44:36E(1), which provides that the district attorney may dispose of a file at the conclusion of the three-year retention period. The retention period ended on September 3, 2002, three years from the date on which the Louisiana Supreme Court denied writs on the defendant’s appeal. See La. R.S. 44:36E(1).

The enforcement provisions of La. R.S. 44:35 presuppose the existence of the records in the office of the custodian. **Wallace v. Ware**, 94-2204 (La. App. 1 Cir. 6/23/95), 657 So.2d 734, 737. Ordering the district attorney to provide records or a cost estimate for records that he no longer possesses would be a vain and useless act. **Wallace**, 657 So.2d at 737; **Chapman v. District Attorney**, 2005-0577 (La. App. 1 Cir. 3/29/06), 934 So.2d 128, 130.

¹ Attached to plaintiff’s petition and to his traverse to the commissioner’s recommendation were copies of a December 1999 letter to the district attorney. The legible copy of the accompanying envelope indicates the envelope was stamped twice with “RETURNED TO SENDER.”

For the above-stated reasons, the district court judgment is affirmed by memorandum opinion in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1B. All costs of this appeal are assessed to the plaintiff/appellant, Glen Welch.

AFFIRMED.