

Circuit Court for Baltimore City
Case No. 24-C-17-003467

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 868

September Term, 2018

LAWRENCE MILLS

v.

OFFICE OF
THE STATE PROSECUTOR, *et al.*

Nazarian,
Wells,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 12, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2016, Lawrence Mills, appellant, was acquitted of driving under the influence following a jury trial in the Circuit Court for Howard County. Thereafter, Mr. Mills requested the Howard County State’s Attorney’s Office to prosecute Maryland State Trooper Anthony Hassan, the arresting officer in his case, for perjury. After the State’s Attorney declined to prosecute Trooper Hassan, Mr. Mills asked the Office of the State Prosecutor to pursue perjury charges.¹ The State Prosecutor also declined to prosecute Trooper Hassan. According to Mr. Mills, he then asked the State Prosecutor to allow him to present his evidence to the grand jury, but the State Prosecutor “refused to convene a Grand Jury.”

On March 9, 2018, Mr. Mills filed an “Amended Petition for Writ of Common Law Mandamus and Declaratory Judgment” in the Circuit Court for Baltimore City. In that petition, he requested the court to issue a writ of common law mandamus requiring the State Prosecutor to pursue perjury charges against Trooper Hassan. Alternatively, he requested the court to enter a declaratory judgment stating that “he has ‘the right to offer to present’ [] to the Grand Jury Foreman testimony and evidence in furtherance of a possible perjury charge against Trooper Hassan.” The State filed a motion to dismiss the

¹ Mr. Mills also filed a “Petition for Writ of Administrative Mandamus Judicial Review and Appropriate Relief,” wherein he sought judicial review of the State’s Attorney’s decision not to prosecute. The circuit court dismissed the petition and we affirmed, holding that: (1) administrative mandamus was inapplicable, and (2) even if the petition were construed as a petition for writ of common law mandamus, it was properly denied because Mr. Mills failed to allege that the State’s Attorney grossly abused its discretion in declining to prosecute. *See Mills v. Howard County State’s Attorney’s Office*, No. 1249, Sept. Term 2016 (filed December 8, 2017).

petition, claiming that: (1) Mr. Mills’s request for common-law mandamus failed to state a claim upon which relief could be granted, and (2) declaratory relief was inappropriate because there was no justiciable controversy between the parties. The court granted the motion to dismiss without a hearing. Mr. Mills now raises three issues on appeal, which reduce to two: (1) whether the court erred in dismissing his petition for writ of mandamus, and (2) whether the court erred in dismissing his request for declaratory relief. For the reasons that follow, we shall affirm.

Mr. Mills first contends that the court erred in dismissing his petition for writ of common law mandamus. We disagree. “[A] writ of mandamus will not lie if the petitioner’s right is unclear or issues only at the discretion of a decision maker[,] . . . or if there be any ordinary adequate legal remedy to which the party applying could have recourse[.]” *Wilson v. Simms*, 380 Md. 206, 223 (2004) (internal quotation marks and citation omitted). Neither requirement was met in this case. As an initial matter, even if the State Prosecutor could have prosecuted Trooper Hassan for perjury, we are not persuaded that his refusal to do so under the circumstances alleged in Mr. Mills’s petition would constitute a gross abuse of discretion, such that the circuit court was required to grant mandamus relief. *See Brack v. Wells*, 184 Md. 86, 90 (1944) (noting that whether a prosecutor does or does not institute a particular prosecution is a matter which rests in his or her discretion and “[u]nless that discretion is grossly abused or such duty compelled by statute or there is a clear showing that such duty exists, mandamus will not lie”). Moreover, mandamus was not appropriate because, as Mr. Mills implicitly concedes, he had an adequate remedy at law. Specifically, the Court of Appeals has recognized if a “citizen

should exhaust his remedy before the magistrate and the state’s attorney[,] . . . and if relief can not [sic] be had there, he then has the right to ask the grand jury for permission to appear before that body.” *Id.* at 97 (affirming the denial of a petition for writ of mandamus seeking to compel the State’s Attorney for Baltimore City to initiate a perjury prosecution because, in addition to failing to allege a gross abuse of discretion, the appellant had an adequate legal remedy). Consequently, the court did not err in dismissing Mr. Mills’s request for mandamus relief.

Mr. Mills alternatively asserts that he was entitled to a declaratory judgment stating that he has the right to offer to present to the Grand Jury Foreman testimony and evidence in furtherance of a possible perjury charge against Trooper Hassan. He also claims that, even if the court did not agree with his position, it erred in dismissing his complaint without making a formal declaration of his rights.

A motion to dismiss “is rarely appropriate in a declaratory judgment action.” *Broadwater v. State*, 303 Md. 461, 466 (1985) (citation omitted). However, when a complaint fails to allege a justiciable controversy, a motion to dismiss is proper. *See Boyds Civic Ass’n v. Montgomery County Council*, 309 Md. 683, 689 (1987). “A controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded.” *Reyes v. Prince George’s County*, 281 Md. 279, 288 (1977). A declaratory relief action that requests adjudication based on facts that have yet to occur or develop lacks ripeness and should be dismissed for failure to allege a justiciable controversy. *See Hickory Point P’ship v. Anne Arundel County*, 316 Md. 118, 130 (1989) (“Generally, an action for declaratory relief

lacks ripeness if it involves a request that the court declare the rights of parties upon a state of facts which has not yet arisen, or upon a matter which is future, contingent and uncertain.” (internal quotation marks and citations omitted)).

As previously set forth, Mr. Mills, like any citizen, has the right to offer to ask the grand jury foreman for permission to appear before that body and present violations of the criminal law if he has exhausted his other remedies, specifically requesting the District Court Commissioner and the State’s Attorney to issue charges. *See Sibley v. Doe*, 227 Md. App. 645, 654-56 (2016).² However, Mr. Mills’s petition for declaratory relief did not allege that he had requested the District Court Commissioner to issue a statement of charges against Trooper Hassan and that the District Court Commissioner had declined to do so. For that reason alone, his request for declaratory relief was not ripe for review as his right to ask the grand jury foreman for permission to appear before the grand jury is contingent on an event that has not yet arisen, that is, the District Court Commissioner declining his request to issue a statement of charges against Trooper Hassan. Moreover, we note that although Mr. Mills’s petition alleges that the State Prosecutor refused to convene a grand jury, it did not allege the State Prosecutor prevented him from personally asking the grand jury foreman in the appropriate county for permission to appear before the grand jury and present his evidence. Thus, a declaratory judgment stating that Mr. Mills has the right to do something that no one has prevented him from doing would be

² The District Court Commissioner is “today’s equivalent of a ‘magistrate’ for purposes of the exhaustion requirement.” *Sibley*, 227 Md. App. at 657.

advisory in nature. Because we conclude that no justiciable controversy exists between the parties, the court properly dismissed Mr. Mills’s request for declaratory relief.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
CITY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**