

JAMES HENRY,

Plaintiff,

No. 53765

Complaint for Mandamus

-v-

DEPARTMENT OF CORRECTIONS,

Defendant.

TO: Judges

FROM: Allan Falk

DATE: January 30, 1981; for submission February 10, 1981.

COMMISSIONER'S REPORT

FACTS:

Plaintiff seeks mandamus to direct defendant either to restore plaintiff's missing personal property or reimburse plaintiff for the value thereof, based on plaintiff's claim that after being removed from his cell and placed in administrative segregation, his property was inventoried by corrections officers and stored, and when returned to plaintiff items totaling in value nearly \$400 were missing. Plaintiff has pursued the grievance process within the prison system to an unsatisfactory conclusion.

ISSUE:

SHOULD AN ORDER TO SHOW CAUSE ENTER?

FINDINGS:

The complaint for mandamus should be dismissed.

It is elementary that mandamus will not lie where there is another plain, speedy, and adequate remedy available. Cyrus v Calhoun County Sheriff, 85 Mich App 397, 399 (1978). Nor is mandamus appropriate where, as here, the duty of the public officer, if any, depends upon disputed and doubtful facts. Toan v McGinn, 271 Mich 28, 33 (1935); Lobaido v Detroit Police Commissioner, 15 Mich App 138, 140 (1968).

Here plaintiff does have available a plain, speedy, and adequate remedy at law, mainly, a suit in the Court of Claims, as

this Court held in Lawrence v Dept of Corrections, 81 Mich App 234 (1978), a case almost indistinguishable factually. Hence, this complaint must be dismissed.

RECOMMENDATION:

The complaint for mandamus should be dismissed. A proposed order has been prepared for the Court's consideration.