

THE STATE EX REL. SIMPSON, APPELLANT, v. COOPER, JUDGE, APPELLEE.

[Cite as *State ex rel. Simpson v. Cooper*,
120 Ohio St.3d 297, 2008-Ohio-6110.]

Mandamus to compel vacation of criminal conviction—Adequate remedy by appeal—Writ denied.

(No. 2008-1712—Submitted November 19, 2008—Decided December 2, 2008.)

APPEAL from the Court of Appeals for Hamilton County, No. C-080473.

Per Curiam.

{¶ 1} This is an appeal from a judgment dismissing a petition for a writ of mandamus to compel a common pleas court judge to vacate a criminal conviction. Because the petition failed to state a viable mandamus claim, we affirm the judgment.

Conviction and Sentence

{¶ 2} In 1984, appellant, Marcus Simpson, was convicted of aggravated robbery and was sentenced to prison. On appeal, the judgment was affirmed. *State v. Simpson* (Apr. 3, 1985), Hamilton App. No. C-840420, 1985 WL 6728.

Mandamus

{¶ 3} In June 2008, Simpson filed a petition in the Court of Appeals for Hamilton County for a writ of mandamus to compel appellee, Hamilton County Common Pleas Court Judge Ethna M. Cooper, to vacate his conviction for aggravated robbery. Simpson claimed that he had been erroneously tried for the uncharged offense of attempted aggravated robbery and that he was actually innocent of the charged and uncharged offenses. The court of appeals granted Judge Cooper's motion to dismiss the petition.

Appeal

SUPREME COURT OF OHIO

{¶ 4} In his appeal as of right, Simpson contends that the court of appeals erred in dismissing his mandamus petition. Simpson's contentions lack merit for the following reasons.

{¶ 5} First, notwithstanding his claims to the contrary, Simpson was convicted of aggravated robbery and not attempted aggravated robbery.

{¶ 6} Second, Simpson had an adequate remedy at law by direct appeal to raise his challenge to the validity or sufficiency of his indictment. *State ex rel. Dix v. McAllister* (1998), 81 Ohio St.3d 107, 108, 689 N.E.2d 561.

{¶ 7} Finally, *res judicata* bars Simpson's claims concerning insufficiency of the evidence supporting his conviction, which he previously asserted in his direct appeal. See, e.g., *Lynch v. Wilson*, 114 Ohio St.3d 118, 2007-Ohio-3254, 868 N.E.2d 982, ¶ 6.

{¶ 8} Therefore, we affirm the judgment of the court of appeals.

Judgment affirmed.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, LANZINGER, and CUPP, JJ., concur.

Joseph T. Deters, Hamilton County Prosecuting Attorney, and James Michael Keeling, Assistant Prosecuting Attorney, for appellee.

Marcus Simpson, pro se.
