

[Cite as *State ex rel. Khanin v. Clancy*, 2018-Ohio-1205.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106683

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STATE OF OHIO, EX REL.  
YURIY I. KHANIN

RELATOR

vs.

HON. MAUREEN CLANCY, JUDGE

RESPONDENT

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**JUDGMENT:**  
**WRIT DENIED**

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Writ of Mandamus  
Motion No. 514261  
Order No. 514654

**RELEASE DATE:** March 28, 2018

**FOR RELATOR**

Yuriy I. Khanin, pro se  
Inmate No. A454714  
Marion Correctional Institution  
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Marion, Ohio 43302

**ATTORNEYS FOR RESPONDENT**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
By: James E. Moss  
Assistant County Prosecutor  
The Justice Center  
1200 Ontario Street  
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PATRICIA ANN BLACKMON, J.:

{¶1} Relator, Yuriy I. Khanin, seeks a writ of mandamus compelling respondent, Judge Maureen Clancy, to resentence him. Khanin argues that the respondent judge is required to impose a period of postrelease control and her refusal to do so entitles Khanin to the relief sought through mandamus. Having reviewed the record and pertinent law, we grant the respondent judge's motion for summary judgment. The apposite facts follow.

{¶2} In 2003, Khanin was sentenced to an agreed prison term of 35 years to life. This sentence was imposed for convictions for aggravated murder, aggravated robbery, and kidnapping. However, the trial court did not impose any period of postrelease control.

{¶3} Khanin filed a notice of appeal and a motion for leave to file a delayed appeal in 2004. This court dismissed the untimely appeal that same year.

{¶4} In October 2017, Khanin filed a "motion for new sentence pursuant to R.C. 2929.191." On November 14, 2017, the trial court denied the motion. After that, the respondent judge received a reply brief filed by Khanin, and again denied the motion on December 15, 2017.

{¶5} On January 3, 2018, Khanin instituted this action attempting to require the respondent judge to hold a new sentencing hearing. The state, on behalf of the respondent judge, filed a motion for summary judgment on

January 26, 2018. The main argument advanced was that the respondent judge lost jurisdiction to impose any period of postrelease control on Khanin because he had completely served the sentences on which postrelease control applied. We agree.

### **Requirements for a Writ of Mandamus**

{¶6} The fundamental criteria for issuing a writ of mandamus are well established. “In order to be entitled to a writ of mandamus, relator must show (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of the law.” *State ex rel. Harris v. Rhodes*, 54 Ohio St.2d 41, 42, 374 N.E.2d 641 (1978), citing *State ex rel. Natl. City Bank v. Bd. of Edn.*, 52 Ohio St.2d 81, 369 N.E.2d 1200 (1977). All three of these requirements must be met in order for mandamus to lie.

### **No Jurisdiction to Act**

{¶7} The respondent judge is under no clear legal duty to perform the requested act. While a trial court is required to impose postrelease control, when applicable, at sentencing and incorporate the advisement into the journal entry of sentence, the respondent judge has no authority to impose postrelease control on Khanin’s aggravated robbery and kidnapping convictions because Khanin has fully served those five-year prison terms.

{¶8} The Ohio Administrative Code details the manner in which multiple prison terms shall be served:

When an offender is serving any stated prison terms consecutively to any life terms of imprisonment and/or to any one, three, five and/or six-year mandatory prison terms imposed pursuant to division (B)(1)(a)(i) of section 2929.14 the Revised Code, for using a firearm in the commission of an offense, and/or division (B)(1)(a)(ii) of section 2929.14 of the Revised Code, for committing a felony by discharging a firearm from a motor vehicle, the aggregate of all such one, three, five and/or six-year mandatory prison terms shall be served first, then the aggregate of all other mandatory prison terms shall be served, and then the aggregate of the non-mandatory portion of the stated prison terms shall be served, and then the aggregate of the non-mandatory portion of the life terms of imprisonment shall be served.

Ohio Adm.Code 5120-2-03.1(M).<sup>1</sup>

{¶9} This administrative code section indicates that Khanin was required to serve his two concurrent five-year sentences for kidnapping and aggravated robbery prior to his indefinite sentence for aggravated murder. Khanin finished serving these two definite sentences in 2008.

{¶10} The Ohio Supreme Court has determined that a court loses jurisdiction to impose postrelease control after a defendant has finished serving the prison term to which an unimposed term of postrelease control applies. *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, paragraph three of the syllabus. There, the court rejected the proposition that a trial court retains jurisdiction to impose postrelease control so long as a defendant is still incarcerated in relation to a given case. *Id.* at \_ 14. A

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<sup>1</sup>This administrative rule applies only to prison terms imposed for offenses committed on or after July 1, 1996. Ohio Adm.Code 5120-2-03(E)(5) has a similar provision governing sentences for crimes committed before July 1, 1996.

court may only correct such an error when the defendant is still serving the prison term for the offense to which postrelease applies.

{¶11} Here, the respondent judge does not have a clear legal duty to impose postrelease control on Khanin. In fact, that is something she cannot do. *Id.* at \_ 9. She has no authority to act in the manner sought by Khanin. Therefore, the writ must be denied.

{¶12} Khanin further argues that because postrelease control was not imposed, there is no valid, final order capable of being appealed in this case. He seeks to compel the respondent judge to issue a final, appealable order. However, Khanin's reliance on *State ex rel. Carnail v. McCormick*, 126 Ohio St.3d 124, 2010-Ohio-2671, 931 N.E.2d 110, is misplaced given more recent developments in Ohio jurisprudence in this area.

{¶13} In *Holdcroft*, the Ohio Supreme Court rejected the notion that a lack of postrelease control rendered the entire sentence void, and thus incapable of invoking appellate jurisdiction. "[S]o long as a timely appeal is filed from the sentence imposed, the defendant and the state may challenge any aspect of the sentence and sentencing hearing, and the appellate court is authorized to modify the sentence or remand for resentencing to fix whatever has been successfully challenged." *Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, at \_ 9, citing R.C. 2953.08. The court went on to note, "absent a timely appeal, res judicata generally allows only the correction of a void sanction." *Id.*, citing *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, \_ 40.

{¶14} Khanin asserts that his sentences are void because the court failed to impose postrelease control. However, only that aspect of the sentencing entries would be void. Other aspects of his sentences may be challenged in a timely filed direct appeal. *Id.*

{¶15} Khanin has failed to establish the requirements necessary for the issuance of a writ in this case. Therefore, we grant the respondent judge's motion for summary judgment. Relator to pay costs; costs waived. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶16} Writ denied.

PATRICIA ANN BLACKMON, JUDGE

TIM McCORMACK, P.J., and  
LARRY A. JONES, SR., J., CONCUR