

[Cite as *State ex rel. Worley v. Ambrose*, 2018-Ohio-1206.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106775

STATE OF OHIO, EX REL.
PEREZ WORLEY

RELATOR

vs.

THE HONORABLE DICK AMBROSE

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 514864
Order No. 515758

RELEASE DATE: March 28, 2018

FOR RELATOR

Perez Worley, pro se
Inmate No. 690264
Trumbull Correctional Institution
P.O. Box 901
Leavittsburg, Ohio 44430

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MELODY J. STEWART, P.J.:

{¶1} Relator, Perez Worley, instituted the present action seeking a writ of mandamus to compel the respondent judge to engage in a resentencing hearing and issue a final, appealable order in the underlying criminal case, Cuyahoga C.P. No. CR-14-587709-B. We grant the respondent judge’s motion for summary judgment and deny the writ.

{¶2} On April 2, 2015, following a jury trial, Worley was found guilty and sentenced for aggravated murder, improperly handling a firearm in a motor vehicle, and having a weapon while under disability. *State v. Worley*, 8th Dist. Cuyahoga No. 103105, 2016-Ohio-2722, _ 4. Worley was given an aggregate sentence of 28 years to life. *Id.* This court affirmed the convictions in his direct appeal. *Id.* at _ 1.

{¶3} In December 2017, Worley filed a “motion for final appealable order pursuant to R.C. 2505.02(A), Crim.R. 32(C) and Article IV 3(B)(2).” The trial court denied the motion at the end of December. Worley then initiated the present action on January 30, 2018. The respondent judge filed a motion for summary judgment, to which no opposition was filed.

{¶4} 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.

{¶5} Initially, we must note that Worley’s petition is defective. Civ.R. 10(A) requires that the caption of the complaint include the name and address of each party. Worley’s petition only includes the name of each party. A failure to comply with Civ.R. 10 is grounds for dismissal. *Greene v. Turner*, 151 Ohio St.3d 513, 2017-Ohio-8305, 90 N.E.3d 901, ¶ 5, citing *Kneuss v. Sloan*, 146 Ohio St.3d 248, 2016-Ohio-3310, 54 N.E.3d 1242, ¶ 11, citing *State ex rel. Sherrills v. State*, 91 Ohio St.3d 133, 133, 742 N.E.2d 651 (2001).

{¶6} Even if the complaint was proper in form, it is moot.

{¶7} The certified journal entry attached to Worley’s complaint indicates that the trial court failed to impose postrelease control on Count 11, improperly handling a firearm in a motor vehicle, and Count 13, having a weapon while under disability. Worley goes on to assert that, despite his previous direct appeal, this deprives him of a final, appealable order capable of invoking appellate jurisdiction. For support, he cites to *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332.

{¶8} In *Fischer*, the Ohio Supreme Court determined that a failure to impose postrelease control resulted in a void sentence. *Id.* at paragraph one of the syllabus. The court clarified, however, that it is only the improper portion of the sentence that is

void. *Id.* at _ 28. The Ohio Supreme Court reaffirmed that a failure to impose postrelease control resulted in a void sanction only. *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, paragraph two of the syllabus. Therefore, only the postrelease control portion of Worley's sentence is void. He may challenge that portion of his sentence at any time, and res judicata is not applicable to such a challenge. *Fischer* at _ 40. Worley is correct that the respondent judge has a duty to impose postrelease control because Worley is still serving those sentences.¹ See Ohio Adm.Code 5120-2-03.1(M).

{¶9} Worley is, however, incorrect that there is no final order capable of invoking appellate jurisdiction in his underlying criminal case. The *Fischer* and *Holdcroft* courts determined that res judicata applies to validly imposed portions of the sentence, and a sentencing journal entry that fails to include postrelease control is still a final, appealable order as to those portions of the sentence that were validly imposed, including the finding of guilt. *Fischer* at _ 40; *Holdcroft* at _ 9.

{¶10} In response to Worley's complaint, the respondent judge filed a motion for summary judgment where it was acknowledged that postrelease control was required but not imposed on Counts 11 and 13. The respondent judge attached a certified copy of a

¹On April 2, 2015, Worley received an 18-month sentence for improperly handling a firearm in a motor vehicle and a 36-month sentence for having a weapon while under disability. Those sentences do not begin until he completes the three-year term for a firearm specification attached to the aggravated murder conviction.

journal entry setting the date for a hearing to impose postrelease control for March 29, 2018.

{¶11} The respondent judge is required to hold a limited sentencing hearing to impose postrelease control for the charges of improperly handling a firearm in a motor vehicle and having a weapon while under disability. The trial court has set a date for that hearing. Therefore, Worley has been provided with the relief sought in his complaint to which he is entitled. This renders the present action moot.

{¶12} 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).

{¶13} Writ denied.

MELODY J. STEWART, PRESIDING JUDGE _____

MARY J. BOYLE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR