

[Cite as *State ex rel. Locke v. Friedland*, 2018-Ohio-180.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106330

STATE OF OHIO, EX REL.
CHARLES LOCKE

RELATOR

vs.

JUDGE CAROLYN FRIEDLAND

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 511580
Order No. 513501

RELEASE DATE: January 16, 2018

FOR RELATOR

Charles Locke, pro se
Inmate No. 662523
Allen Correctional Institution
P.O. Box 4501
Lima, Ohio 45802

ATTORNEYS FOR RESPONDENT

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

MELODY J. STEWART, J.:

{¶1} The relator, Charles Locke, commenced this mandamus action against the respondent, Judge Carolyn Friedland, to compel her to “resentence” him and issue a new sentencing journal entry. The respondent judge has moved for summary judgment on multiple grounds, including that Locke had an adequate remedy of law by way of appeal, thereby precluding the extraordinary writ of mandamus. For the following reasons, this court grants respondent’s motion for summary judgment and denies Locke’s application for a writ of mandamus.

A. Procedural History and Facts

{¶2} In Cuyahoga C.P. No. CR-14-587262-A, Locke pleaded guilty to two counts of unlawful sexual conduct with a minor, five counts of pandering sexually oriented matter involving a minor, and possessing criminal tools. The trial court subsequently sentenced him to a total prison term of 19 years and 6 months. Locke appealed. This court ultimately vacated the imposition of consecutive sentences on the grounds that the trial court failed to make the necessary findings and further remanded the matter to the trial court for a limited resentencing hearing. *See State v. Locke*, 8th Dist. Cuyahoga No. 102371, 2015-Ohio-3349.

{¶3} On remand, in December 2015, the trial court resentenced Locke to a total prison term of ten years. The journal entry was journalized on

December 18, 2015, memorializing both Locke's conviction and sentence. Locke did not appeal.

{¶4} On October 3, 2017, Locke filed a petition for writ of mandamus, asking this court to order the respondent to resentence him for purposes of obtaining a final appealable order. According to Locke, the respondent must fulfill the following three duties that it had omitted at the time of resentencing: (1) advise him of his right to appeal under Crim.R. 32(B); (2) comply with Crim.R. 11(C) prior to accepting his plea; and (3) issue a single journal entry that complies with Crim.R. 32(C). Respondent moved for summary judgment on the grounds that Locke has not established that he has a clear legal right to the relief requested and that an adequate remedy of law through an appeal precludes the writ. Locke subsequently filed a reply, reiterating his same arguments that “no final appealable order exists” and that the respondent “had a clear legal duty to make the required findings of guilt” at his resentencing hearing and to advise him of his right to appeal.

B. Analysis

{¶5} To be entitled to a writ of mandamus, Locke must establish a clear legal right to the requested relief, a clear legal duty on the part of Judge Friedland to provide it, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6. Locke must prove that he is entitled to the writ by clear and convincing evidence. *Id.* at ¶ 13.

{¶6} Mandamus is not a substitute for appeal. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); and *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Thompson v. Saffold*, 8th Dist. Cuyahoga No. 102061, 2015-Ohio-321, ¶ 6. Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977).

{¶7} Locke's claim for mandamus does not lie in this case. Contrary to Locke's assertion, the December 18, 2015 journal entry is a final order that fully complies with Crim.R. 32(C). "A judgment of conviction is a final order subject to appeal under R.C. 2505.02 when it sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk." *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus; *see also* Crim.R. 32(C). The 2015 sentencing journal entry included all of the required elements and resolved all of the charges. Thus, it was a final, appealable order.

{¶8} Further, Crim.R. 32(C) — specifying the content of a judgment — does not require that the trial court memorialize the Crim.R. 32(B) notification of the right to appeal in the sentencing entry. *State ex rel. Wright v. Cuyahoga Cty. Court*, 8th Dist. Cuyahoga No. 96397, 2011-Ohio-2159, ¶ 2. This court has consistently recognized that

no duty exists under Crim.R. 32 to state in a resentencing journal entry that the defendant was advised of his right to appeal. *Id.*; *State ex rel. Steele v. Gall*, 8th Dist. Cuyahoga No. 102683, 2015-Ohio-2164, ¶ 4. Locke's reliance on this court's decision in *State v. Hunter*, 8th Dist. Cuyahoga No. 92626, 2010-Ohio-657, in support of his original action is misplaced. In *Hunter*, this court held in a direct appeal that the trial court's failure to inform defendant during resentencing of the right to appeal was error. For purposes of this original action, however, this court need not determine whether the respondent erred during Locke's December 2015 resentencing. Indeed, *Hunter* demonstrates that Locke had an adequate remedy by way of appeal to challenge the alleged defects at the resentencing.

{¶9} Finally, Locke fails to demonstrate any clear legal duty on the part of respondent to incorporate Crim.R. 11(C) in a resentencing journal entry. Notably, this court's remand in *State v. Locke*, 8th Dist. Cuyahoga No. 102371, 2015-Ohio-3349, was limited for the purposes of resentencing to consider the imposition of consecutive sentences, and therefore, the respondent had no authority to review Locke's conviction during the December 2015 resentencing hearing. *See State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381, ¶ 15.

{¶10} In summary, Locke's petition does not establish that he has a clear legal right to a new sentencing entry or that the respondent judge has a corresponding duty to provide one.

{¶11} Accordingly, respondent's motion for summary judgment is granted. Relator to pay costs. It is further ordered that the clerk of courts serve notice of this judgment upon all parties as required by Civ.R. 58(B).

{¶12} Writ denied.

MELODY J. STEWART, JUDGE

EILEEN T. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR