

[Cite as *Patterson v. Cuyahoga Cty. Common Pleas Court*, 2019-Ohio-110.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107755

ENNIS R. PATTERSON

RELATOR

vs.

CUYAHOGA COUNTY COMMON PLEAS COURT

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 522710
Order No. 523830

RELEASE DATE: January 8, 2019

FOR RELATOR

Ennis R. Patterson
Inmate No. A692029
Belmont Correctional Institution
P.O. Box 540
Saint Clairsville, Ohio 43950

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

ANITA LASTER MAYES, J.:

{¶1} Relator, Ennis R. Patterson, seeks a writ of mandamus to compel respondent, the Cuyahoga County Common Pleas Court, to vacate his convictions and dismiss the charges against him, or order a new trial pursuant to a postconviction relief petition he filed in *State v. Patterson*, Cuyahoga C.P. No. CR-16-606673-A. The Cuyahoga County Prosecutor's Office, on behalf of respondent, filed a motion for summary judgment, which we grant. To the extent that Patterson argues the respondent has not validly ruled on his postconviction relief petition, the action is moot. The remainder of the arguments raised in this action are inappropriate for mandamus. Therefore, the request for the issuance of a writ of mandamus is denied.

I. Background and Facts

{¶2} A review of the publicly available dockets for *State v. Patterson*, Cuyahoga C.P. No. CR-16-606673-A, *State v. Patterson*, 8th Dist. Cuyahoga No. 106675 (dismissed by journal

entry on January 23, 2018), and *State v. Patterson*, 8th Dist. Cuyahoga No. 107405 (dismissed by journal entry on July 30, 2018), provides the following procedural history.¹

{¶3} At the end of 2017, Patterson filed motions for postconviction relief in the above criminal case. Prior to the trial judge issuing a decision on the motions, Patterson filed a notice of appeal. This court dismissed the appeal on January 23, 2018. Patterson then filed a series of motions to dismiss and petitions to “vacate or set aside judgment of conviction of sentence.” On April 25, 2018, the trial judge denied several of Patterson’s motions, including the motions for postconviction relief, but those decisions were not journalized until June 6, 2018.

{¶4} A notice of appeal was filed July 2, 2018, from the decision denying Patterson’s postconviction relief petition. On July 30, 2018, this court dismissed the appeal because prior to the filing of the notice of appeal, the trial court had not issued findings of fact and conclusions of law. While this appeal was pending, the trial court journalized findings of fact and conclusions of law on July 9, 2018. Because the trial court lost jurisdiction to issue findings of fact and conclusions of law while the appeal was pending, this court dismissed the appeal.

{¶5} Following dismissal, on October 15, 2018, the trial court properly reissued findings of fact and conclusions of law denying Patterson’s postconviction relief petition. It did so again on November 5, 2018, specifically directing that the order and attached findings of fact and conclusions of law be served on Patterson at an address set forth in the order.

{¶6} On October 3, 2018, Patterson filed the instant action seeking to compel respondent to vacate his convictions and dismiss the charges against him or to grant a new trial.

¹ See *Cornelison v. Russo*, 8th Dist. Cuyahoga No. 107283, 2018-Ohio-3574, fn.2, citing *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, _ 8 (a court may take notice of a court docket that is publicly available on the internet).

Respondent filed a motion for summary judgment, with leave, on November 6, 2018, and Patterson filed a brief in opposition on November 29, 2018.

II. Law and Analysis

A. Standard of Review

{¶7} In order for a writ of mandamus to issue, (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 95777, 2011-Ohio-1966, ¶ 6, citing *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). A court should exercise the utmost caution when issuing a writ of mandamus and it is within the court's discretion to deny the writ when any element is lacking or in the close case. *Id.*, citing *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph seven of the syllabus.

{¶8} This matter is decided on summary judgment, where pursuant to Civ.R. 56, this court must determine that there is no genuine issue as to any material fact, and after construing all evidence in favor of the nonmoving party, the moving party is entitled to judgment as a matter of law. Civ.R. 56(C); *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996).

B. Procedural Irregularities

{¶9} Initially, we note that Patterson's complaint for a writ of mandamus is defective in that it is improperly captioned. A complaint for a writ of mandamus must be brought in the name of the state, on relation of the person applying. R.C. 2731.04. The failure to properly caption a complaint for a writ of mandamus warrants dismissal. *Allen v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 181 N.E.2d 270 (1962); *Thompson v. State*, 8th Dist.

Cuyahoga No. 99265, 2013-Ohio-1907. Further, Patterson failed to include an address for each party in the caption of his complaint. Civ.R. 10 requires that the caption of a complaint include the name and address of each party. This failure is also grounds for dismissal. *Jordan v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 96013, 2011-Ohio-1813.

C. Mootness

{¶10} Looking beyond these fatal procedural defects, the docket in Patterson’s case indicates that Patterson’s postconviction relief petition was denied with properly issued findings of fact and conclusions of law. To the extent Patterson appears to assert in his complaint that respondent has not properly denied his petition, the action is moot.

{¶11} An action for writ of mandamus becomes moot when the requested relief is attained. *State ex rel. Jerningham v. Court of Common Pleas*, 74 Ohio St.3d 278, 658 N.E.2d 723 (1996). A decision has been rendered on Patterson’s petition. Therefore, this portion of his claim for mandamus is moot.

D. Mandamus Cannot Control Judicial Discretion

{¶12} Patterson further asserts that this court must issue a writ of mandamus directing respondent to discharge him or grant him a new trial. However, such a request is not appropriate for mandamus under these circumstances.

{¶13} “Although a writ of mandamus may require an inferior tribunal to exercise its judgment or to proceed to the discharge of its function, R.C. 2731.03, it may not control judicial discretion, even if such discretion is grossly abused.” *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 119, 515 N.E.2d 914 (1987), citing R.C. 2731.03; *State ex rel. Sawyer v. O’Connor*, 54 Ohio St.2d 380, 377 N.E.2d 494 (1978). Here, respondent has fulfilled the obligation to rule on Patterson’s postconviction relief petition by denying it with appropriate findings of fact and

conclusions of law. Respondent has exercised discretion in making that determination, and mandamus will not lie to control that judicial discretion. *O'Connor* at 383; *State ex rel. Jones v. Friedland*, 8th Dist. Cuyahoga No. 81226, 2002-Ohio-2757, _ 6. Review of respondent's exercise of that discretion through appeal is or was an available and proper remedy. *State ex rel. Nash v. Fuerst*, 8th Dist. Cuyahoga No. 99027, 2013-Ohio-592, _ 9.

{¶14} The propriety of our holding is made all the more crystalline by Patterson's arguments made in his brief in opposition to respondent's motion for summary judgment. There, he argues that he is, in fact, seeking to control the discretion of respondent by having this court order that respondent grant him a new trial or dismiss the charges against him. Mandamus will not lie in such a case, in part because mandamus is generally unavailable to control judicial discretion, and also because Patterson has an adequate remedy by way of appeal from the final order denying his petition.

{¶15} This leads inexorably into the well-worn judicial refrain that mandamus cannot be used as a substitute for appeal. *Broderick v. Paris*, 8th Dist. Cuyahoga No. 106987, 2018-Ohio-2123, _ 5, citing *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); *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. As this court has long held, "mandamus does not lie to correct errors and procedural irregularities in the course of a case." *Id.*, citing *State ex rel. Jerningham v. Gaughan*, 8th Dist. Cuyahoga No. 67787, 1994 Ohio App. LEXIS 6227 (Sept. 26, 1994).

III. Conclusion

{¶16} Appeal is the appropriate means to address Patterson's grievances about the denial of his postconviction petition. To the extent he asserts that various procedural

irregularities must be addressed, those are now resolved, rendering arguments about them moot. Accordingly, this court grants the respondent's dispositive motion and denies the application for a writ of mandamus. 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).

{¶17} Writ denied.

ANITA LASTER MAYS, JUDGE

MARY J. BOYLE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR