THE STATE EX REL. COWAN, APPELLANT, *v.* GALLAGHER, JUDGE, APPELLEE.

[Cite as *State ex rel. Cowan v. Gallagher,* 147 Ohio St.3d 416, 2016-Ohio-7430.]

*Mandamus—Relator had adequate remedy at law by way of appeal—Denial of writ affirmed.*

(No. 2015-2088—Submitted July 12, 2016—Decided October 25, 2016.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 103470, 2015-Ohio-5156.

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**Per Curiam.**

{¶ 1} We affirm the Eighth District Court of Appeals' denial of a writ of mandamus to appellant, Craig A. Cowan, because Cowan had an adequate remedy in the ordinary course of the law by way of appeal.

*Facts*

{¶ 2} In January 2012, Cowan was tried for and found guilty of several offenses. The court imposed a prison sentence, and Cowan filed an appeal. *See State v. Cowan*, 8th Dist. Cuyahoga No. 97877, 2012-Ohio-5723, ¶ 13. Prior to his trial, Cowan had filed a motion to represent himself, but the trial court never ruled on it.

{¶ 3} Cowan's appellate counsel raised five assignments of error. Cowan was granted leave to file a supplemental pro se brief, but he was also instructed that the brief was not to exceed ten pages. *Id.* at ¶ 45. The brief contained arguments regarding his motion for self-representation, but because Cowan failed to comply with the page limitation set by the court's order, his supplemental brief was stricken, and the court of appeals did not rule on his arguments regarding the self-

representation motion.  *Id.*; *State v. Cowan*, 8th Dist. Cuyahoga No. 97877, 2013-Ohio-1172, ¶ 3-4.

{¶ **4**} Cowan applied to reopen the appeal because his appellate counsel had failed to argue that the trial court erred in failing to rule on his motion for self-representation.  The court of appeals denied his application.  2013-Ohio-1172 at ¶ 5. Since then, Cowan has pursued numerous other appeals regarding his conviction and sentence.  *State v. Cowan*, 8th Dist. Cuyahoga No. 99566, 2013-Ohio-4475; *State v. Cowan*, 8th Dist. Cuyahoga No. 100741, 2014-Ohio-3593; *State v. Cowan*, 8th Dist. Cuyahoga No. 101995, 2015-Ohio-2271.

{¶ **5**} On September 3, 2015, Cowan filed a complaint against appellees, Judge Shannon M. Gallagher and Prosecuting Attorney Timothy J. McGinty, asking the Eighth District for a writ of mandamus compelling a ruling on his motion to represent himself.  Appellees filed a motion to dismiss Cowan's complaint, which the Eighth District granted.

{¶ **6**} Cowan appealed to this court.

*Analysis*

{¶ **7**} To be entitled to extraordinary relief in mandamus, Cowan must establish a clear legal right to the requested relief, a clear legal duty on the part of the court of appeals 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.

{¶ **8**} Cowan's motion to represent himself was effectively denied when the trial court disposed of the case.  *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 13 ("A motion not expressly decided by a trial court when the case is concluded is ordinarily presumed to have been overruled").  Cowan had an opportunity to argue his self-representation issue in his direct appeal.  However, because his brief did not conform to the page limits, the court of appeals did not

consider his arguments.  He could have further appealed the issue to this court, but he did not.

**{¶ 9}** Because he had an opportunity to appeal the issue, Cowan had an adequate remedy in the ordinary course of the law.  In general, an available appeal is a remedy sufficient to preclude a writ of mandamus.  *State ex rel. Caskey v. Gano*, 135 Ohio St.3d 175, 2013-Ohio-71, 985 N.E.2d 453, ¶ 2.

**{¶ 10}** Accordingly, we affirm the Eighth District's judgment denying Cowan's petition for a writ of mandamus.

Judgment affirmed.

O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, KENNEDY, FRENCH, and O'NEILL, JJ., concur.

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Craig A. Cowan, pro se.

Timothy J. McGinty, Cuyahoga County Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, for appellees.

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