

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel.] Andre Easley,	:	
Relator,	:	
v.	:	No. 14AP-346
Judge Guy Reece,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on June 9, 2015

Andre Easley, pro se.

Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,
for respondent.

IN MANDAMUS
ON OBJECTION TO THE MAGISTRATE'S DECISION

BRUNNER, J.

{¶ 1} Relator, Andre Easley, has filed this original action for a writ of mandamus against respondent, the Honorable Guy Reece, II, a judge of the Franklin County Court of Common Pleas. By order of September 25, 2012, Judge Reece denied relator's request for a complete transcript of proceedings to be produced and transmitted at the state's expense in common pleas court case Nos. 11CR-2939 and 11CR-6157. The transcript relator had sought was for these criminal proceedings that were concluded respectively with relator's guilty pleas to rape; and to attempted murder, aggravated arson, and intimidation of a crime victim or witness. Relator moved through appointed counsel to voluntarily dismiss his appeals to this court. The motions were granted on January 28, 2013. His later pro se application for reopening was denied. Our records in those cases

further indicate that this court granted relator's motion for production of the transcript at state expense on October 30, 2012. The transcript was filed on December 7, 2012. Relator claims that he has not received the transcript and also was not provided discovery materials by his appointed counsel in the office of the Ohio Public Defender.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate. Respondent moved to dismiss the complaint, and after relator filed his memorandum in opposition, the magistrate issued an order converting the motion to dismiss to one for summary judgment. The magistrate granted the motion for summary judgment in a decision, including findings of fact and conclusions of law, appended hereto.

{¶ 3} The magistrate held that relator had a plain and adequate remedy in the ordinary course of the law by way of an appeal to this court. Relator voluntarily dismissed his appeal from the convictions pursuant to his pleas, and Judge Reece's order denying relator's motion for a complete transcript of proceedings at state expense had been obviated by our order granting this same request on his appeal.

{¶ 4} Relator also submits Judge Reece's August 16, 2013 decision and entry denying his postconviction motion for a bill of particulars and discovery. He does not mention that on August 19, 2013 Judge Reece denied yet another motion by relator for production of the transcript. There was no appeal from either order. Although an indigent prisoner is entitled to relevant portions of a transcript on appeal or in seeking postconviction relief, such proceedings must be pending at the time the transcript is sought. *State ex rel. Murr v. Thierry*, 34 Ohio St.3d 45 (1987). Defendant was provided a copy of the transcript for purposes of his direct appeal, and is not entitled to another transcript at public expense. *Id.*; *State v. Waddell*, 10th Dist. No. 01AP-539 (Nov. 6, 2001).

{¶ 5} In the course of postconviction proceedings there is no automatic right to civil discovery. *State ex rel. Love v. Cuyahoga Cty. Prosecutor's Office*, 87 Ohio St.3d 158, 158-59 (1999). As we recently noted, whereas the courts of appeals routinely have rejected attempts by postconviction petitioners to obtain discovery to help them establish substantive grounds for relief, the Supreme Court of Ohio has not decided whether a petitioner may be entitled to some limited discovery once an evidentiary hearing is

granted in a postconviction relief case. *State v. Montgomery*, 10th Dist. No. 13AP-1091, 2015-Ohio-500, ¶ 8, 11. Relator's petition to vacate or set aside the judgment of conviction and his sentence was denied on April 24, 2013, along with his application for DNA testing. No petition for postconviction relief is pending.

{¶ 6} With respect to his further complaint that the public defender has not provided his discovery materials, particularly those items marked "counsel only" under Crim.R. 16, and which the public defender advised him would not be provided without a court order, relator provides no indication that these items were before Judge Reece. Under Crim.R. 16(F), the trial court's review, on defendant's motion, of the prosecuting attorney's decision of nondisclosure or designation of "counsel only" material is to be conducted seven days prior to trial.

{¶ 7} A relator who seeks a writ of mandamus must establish:

(1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental unit to provide it, and (3) 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. The relator must prove entitlement to the writ by clear and convincing evidence. *State ex rel. Cleveland Right to Life v. State Controlling Bd.*, 138 Ohio St.3d 57, 2013-Ohio-5632, 3 N.E.3d 185, ¶ 2.

State ex rel. Manley v. Walsh, ___ Ohio St.3d ___, 2014-Ohio-4563, ¶ 18. We agree with the magistrate that relator had adequate remedies at law by way of appeal and also by postconviction relief, and therefore his complaint for a writ of mandamus must be dismissed. *State ex rel. Sampson v. Parrott*, 82 Ohio St.3d 92, 93 (1998). "Where a plain and adequate remedy at law has been unsuccessfully invoked, a writ of mandamus will not lie to relitigate the same issue." *Id.*, citing *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 47 (1997). We further add that relator has shown no clear legal right to the relief requested, and no clear duty on the part of respondent to provide the relief requested.

{¶ 8} For the foregoing reasons, relator's objection is overruled. Upon review of the magistrate's decision and an independent review of the record, we find that the

magistrate has properly determined the pertinent facts, and we adopt them as our own, along with the magistrate's conclusion granting summary judgment for respondent.

*Objection overruled;
writ of mandamus denied.*

DORRIAN and HORTON, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel.] Andre Easley,	:	
Relator,	:	
v.	:	No. 14AP-346
Judge Guy Reece,	:	(REGULAR CALENDAR)
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on January 16, 2015

Andre Easley, pro se.

Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,
for respondent.

IN MANDAMUS
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

{¶ 9} In this original action, relator, Andre Easley, an inmate of the Ross Correctional Institution, requests that a writ of mandamus issue against respondent, the Honorable Guy L. Reece, II, a judge of the Franklin County Court of Common Pleas ("common pleas court").

Findings of Fact:

{¶ 10} 1. On April 24, 2014, relator filed this mandamus action.

{¶ 11} 2. In his complaint, relator alleges that respondent denied his request for production of a complete transcript at state expense.

{¶ 12} 3. On May 27, 2014, respondent filed in this action a motion to dismiss. In support, respondent attached as an exhibit a copy of his September 25, 2012 decision and entry denying relator's motion for preparation of a complete transcript of proceedings at state expense which was filed in the common pleas court on September 6, 2012 in case Nos. 11CR-06-2939 and 11CR-11-6157.

{¶ 13} 4. On June 5, 2014, relator filed his memorandum in opposition to respondent's motion to dismiss.

{¶ 14} 5. On August 28, 2014, the magistrate issued an order converting respondent's May 27, 2014 motion to dismiss to one for summary judgment.

{¶ 15} 6. By separate order, the magistrate issued notice that respondent's May 27, 2014 motion for summary judgment is set for submission to the magistrate on September 18, 2014.

{¶ 16} 7. On September 11, 2014, relator filed a document captioned "Evidence in Support." However, relator does not dispute that respondent in fact issued his decision and entry on September 25, 2012 denying his motion for preparation of a complete transcript of proceedings at state expense.

Conclusions of Law:

{¶ 17} It is the magistrate's decision that this court grant respondent's motion for summary judgment.

{¶ 18} Summary judgment is appropriate when the movant demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, said party being entitled to have the evidence construed most strongly in his favor. *Turner v. Turner*, 67 Ohio St.3d 337, 339-40 (1993); *Bostic v. Connor*, 37 Ohio St.3d 144, 146 (1988); *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978). The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115 (1988).

{¶ 19} It is well settled that, in order for a writ of mandamus to issue, relator must demonstrate: (1) he has a clear legal right to the relief prayed for; (2) the respondent is under a clear legal duty to perform the act; and (3) relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28 (1983).

{¶ 20} Here, relator's complaint against respondent appears to be that respondent denied his motion for preparation of a complete transcript of proceedings at state expense. Relator alleges other factual scenarios with respect to persons other than respondent, but there is no allegation that those other persons are the subject of any pending motion before respondent.

{¶ 21} Accordingly, relator's response to the motion for summary judgment must be viewed under Civ.R. 56(E), which provides:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

{¶ 22} If relator was dissatisfied with respondent's September 25, 2012 decision denying his September 6, 2012 motion for preparation of a complete transcript of proceedings at state expense, he had a plain and adequate remedy at law by way of an appeal to this court.

{¶ 23} Accordingly, it is the magistrate's decision that this court grant respondent's motion for summary judgment.

/S/ MAGISTRATE
KENNETH W. MACKE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).