

**THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

JEFFREY D. WALLACE ,	:	<b>PER CURIAM OPINION</b>
Relator,	:	
- vs -	:	<b>CASE NO. 2004-T-0008</b>
STATE OF OHIO,	:	
Respondent.	:	

Original Action for a Writ of Mandamus.

Judgment: Petition dismissed.

*Jeffrey D. Wallace*, pro se, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-8901 (Relator).

*Dennis Watkins*, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Respondent).

PER CURIAM.

{¶1} This action in mandamus is presently before this court for consideration of the motion to dismiss of respondent, the State of Ohio. As the primary grounds for its motion, respondent submits that the petition of relator, Jeffrey D. Wallace, fails to state a viable claim for a writ because his own allegations show that he could have pursued

an alternative remedy to obtain the identical relief he is now seeking. For the following reasons, we conclude that the motion to dismiss has merit.

{¶2} As the basis for his mandamus petition, relator alleges that, in April 2002, he was convicted of certain felony offenses in the Trumbull County Court of Common Pleas. Relator further asserts that the trial court then sentenced him to an aggregate prison term of seven years, but that the trial court committed certain errors in rendering this sentence. Specifically, he alleges that the trial court failed to state upon the record during the sentencing hearing its reasoning for imposing non-minimum prison terms on the felony offenses and for requiring him to serve the separate terms consecutively.

{¶3} In support of the latter allegation, relator states that, in August 2003, the Supreme Court of Ohio concluded that a trial court's failure to indicate on the record the grounds for its findings on those specific issues constitutes prejudicial error. See *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165. Based upon this, relator requests the issuance of a writ to require the trial court in his underlying criminal case to vacate his original sentence, hold a new sentencing hearing in which the requirements of *Comer* are met, and then impose a new sentence on the underlying offenses.

{¶4} Immediately after the Supreme Court rendered the *Comer* decision, other prisoners whose sentences were imposed prior to August 2003 brought actions asking this court to grant the same relief as relator now seeks. In *Olds v. State*, 11th Dist. No. 2003-A-0129, 2004-Ohio-1848, 2004 Ohio App. LEXIS 1619, the prisoner sought a writ of mandamus to compel the county prosecutor to reopen his criminal case so that his sentence could be vacated. The basis for this request was that, when the prisoner was sentenced in 2001, the trial judge did not make the necessary findings on the record in

accordance with the new Supreme Court precedent. In dismissing the *Olds* petition for failure to state a viable claim for relief, this court stated:

{¶5} “As an initial point, this court would indicate that, according to relator’s own factual allegations, the *Comer* decision was rendered approximately two years after his conviction became final. In considering the issue of the retroactive application of new case law, the Supreme Court of Ohio has stated any judicial alteration of a criminal rule of law must be applied to any case which is still pending in our state court system. See *State v. Evans* (1972), 32 Ohio St.2d 185, 187, \*\*\*. However, once a conviction has become ‘final’ because the defendant can no longer pursue any appellate remedy, any new case law cannot be applied retroactively even if it would be relevant to the facts of his case. See *State v. Spaulding* (Apr. 10, 1991), 9th Dist. No. 14710, 1991 Ohio App. LEXIS 1706.

{¶6} “In the instant action, relator has not alleged that he had an appeal pending before this court or the Supreme Court at the time the *Comer* decision was issued. As a result, even if a mandamus action can be used to require the State of Ohio to reopen a criminal proceeding, relator has failed to state a valid reason to warrant the reopening of his case because he is not entitled to have the *Comer* holding applied to the facts of his situation. Simply stated, the basic requirements of due process do not require that any subsequent changes in the law must be retroactively applied to cases which have already concluded.

{¶7} “More importantly, this court would note that, in challenging the propriety of the procedure the trial court followed during his sentencing hearing, relator is asserting a nonjurisdictional question which he could have raised in a direct appeal

from his final conviction. As we have stated on numerous prior occasions, in order for a relator to be entitled to a writ of mandamus, he must be able to establish, inter alia, that there does not exist an alternative adequate legal remedy he could pursue. *Hamilton v. Collins*, 11th Dist. No. 2003-L-106, 2003-Ohio-5703. Under this requirement, a writ will not lie if the relator could obtain the same basic relief he seeks in the mandamus case through a distinct legal proceeding. *State ex rel. Norris v. Watson*, 11th Dist. No. 2001-P-0089, 2001-Ohio-3932. In considering this requirement in situations in which the relator has tried to use a mandamus action as a means of challenging his criminal conviction, we have held that a direct appeal from the conviction constitutes an adequate legal remedy which forecloses the issuance of a writ. *Id.*

{¶8} “In relation to this point, the Supreme Court has held that the prior failure of a relator to pursue a direct appeal does not alter the outcome of this analysis; i.e., the mere fact that the relator could have brought an appeal is sufficient to establish that the writ of mandamus cannot be issued because an adequate legal remedy existed. *State ex rel. Schneider v. Bd. of Edn. of North Olmsted City School Dist.* (1992), 65 Ohio St.3d 348, 1992 Ohio 126, \*\*\*. The *Schneider* court emphasized that if a direct appeal could be rendered ‘inadequate’ simply by the failure of the relator to pursue it, he would always ignore the appellate process and use a mandamus action as a substitute for an appeal.” *Olds*, 2004 Ohio App. LEXIS 1619, at ¶ 3-6.

{¶9} The foregoing logic from *Olds* would clearly be applicable to the petition in the instant case. First, relator has not alleged that, at the time the *Comer* decision was rendered in August 2003, he had an appeal pending before this court or the Supreme

Court; as a result, the *Comer* holding cannot be applied retroactively to his April 2002 conviction. Second, since relator could have contested the alleged sentencing errors in a direct appeal from his conviction, he cannot raise those issues in the context of a mandamus action because the direct appeal constitutes an adequate remedy at law.

{¶10} As was also indicated in our *Olds* opinion, a mandamus claim can be subject to dismissal under Civ.R. 12(B)(6) when the nature of the allegations are such that, even if those allegations are construed in a manner most favorable to the relator, they are still legally insufficient to demonstrate that he will be able to prove each element of the claim. *Olds*, 2004 Ohio App. LEXIS 1619, at ¶ 7. In applying this standard to the instant petition, this court concludes that relator's allegations are not sufficient to show that he lacked an adequate legal remedy through which he could obtain the same relief sought in this action. Accordingly, since relator will be unable to satisfy each element of a mandamus claim, the dismissal of his petition is warranted because he has failed to state a viable claim for a writ of mandamus.

{¶11} Pursuant to the foregoing analysis, respondent's motion to dismiss the mandamus petition is granted. It is the order of this court that relator's mandamus petition is hereby dismissed.

DONALD R. FORD, P.J., JUDITH A. CHRISTLEY and DIANE V. GRENDALL JJ.,  
concur.