[Cite as *State ex rel. Becar v. Culotta*, 2010-Ohio-6575.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE ex rel. ANDREW P. BECAR,	:	**PER CURIAM OPINION**
Relator,	:	**CASE NO. 2010-L-106**
- vs -	:	
HONORABLE VINCENT A. CULOTTA,	:	
Respondent.	:	

Original Action For Writ of Mandamus.

Judgment: Writ denied.

Andrew P. Becar, pro se, PID: 562-091, Belmont Correctional Institution, P.O. Box 540, St. Clarisville, OH 43950-0540. (Relator).

Charles E. Coulson, Lake County Prosecutor, and *Michael L. DeLeone*, Assistant Prosecutor, 105 Main Street P.O. Box 490, Painesville, OH 44077 (For Respondent).

PER CURIAM.

{¶1} This proceeding in mandamus is presently before this court for disposition of the summary judgment motion of respondent, Judge Vincent A. Culotta of the Lake County Court of Common Pleas. As the primary basis for the motion, respondent states that he is entitled to prevail on the sole claim of relator, Andrew P. Becar, because the undisputed facts of the action demonstrate that there was an alternative remedy which could have been pursued to resolve the underlying dispute. For the following reasons, we hold that the granting of summary judgment is justified under Civ.R. 56(C).

{¶2} In bringing this original action, relator sought the issuance of a writ which

would order respondent to grant him an additional jail-time credit under R.C. 2967.191. In requesting this relief in his mandamus petition, relator did not set forth any assertions concerning the underlying facts of the situation; instead, the petition only contained the conclusory statement that respondent had a clear legal duty to make such an award in his favor. However, in now moving for summary judgment, respondent has submitted evidentiary materials which fully explain the nature of the situation. Thus, the ensuing statement of facts in this opinion is based upon respondent's materials.

{¶3} Beginning in April 2006, relator was the criminal defendant in three distinct criminal cases before respondent. In each case, he ultimately entered a plea of guilty to a number of offenses, including grand theft, importuning, and promoting prostitution. In the first matter, respondent initially imposed community control for the sentence. In the other two cases, though, definite prison terms were imposed. Furthermore, once relator had entered his guilty plea in the third case, the community control sanction in the first case was revoked and relator was sentenced to additional prison terms. The last of the various terms was imposed by respondent in February 2009.

{¶4} In two of the three separate sentencing judgments, respondent expressly ordered that relator was entitled to certain jail-time credit. Despite this, after relator had served approximately sixteen months in a state institution, he submitted a new motion on the "credit" issue in each of the underlying cases. Specifically, he moved respondent to grant an additional credit for days which supposedly had not been covered under the two sentencing judgments.

{¶5} In each of the three criminal cases, the state filed its response within four days of the submission of the "credit" motion. Once relator had submitted a reply brief,

respondent rendered a new judgment in all three proceedings. In two of the three new judgments, respondent denied the "credit" motion on the basis that relator had already been given credit for all days in which he had been held in the county jail prior to the imposition of the final sentence in those cases. In the third new judgment, respondent granted the "credit" motion in part, concluding that relator was entitled to an additional four-day credit in regard to the sentence in that particular case.

{¶6} Each of the new "credit" judgments was rendered within seventy-six days of the filing of relator's motion at the trial level. Approximately twenty-five days before the release of respondent's new judgments, relator instituted the instant original action before this court. Notwithstanding the fact that respondent had not gone forward at that time, relator's prayer for relief did not request an order which would require respondent to immediately issue an actual ruling on the "credit" question. Rather, he sought a writ which would require respondent to render a decision in his favor on the matter. To this extent, it was clearly relator's intent to use the mandamus action as a means of dictating the substance of respondent's final decision regarding whether an additional jail-time credit was warranted.

{¶7} In his present motion under Civ.R. 56(C), respondent essentially contends that relator is barred from using the instant action for that purpose because the merits of a "credit" dispute cannot be reviewed in this type of proceeding. Specifically, he argues that relator will not be able to satisfy each element for the writ because the substance of the new "credit" judgments can only be contested in direct appeals taken from the three final determinations. In other words, it is respondent's position that a writ can never lie under the facts of this case because relator had an adequate legal remedy in which he

could have further litigated the "credit" question.

{¶8} The foregoing contention is predicated upon respondent's assertion that he has completely disposed of relator's "credit" motion through the release of the three new judgments. As was noted above, relator's petition did not contain any allegation on this particular point. In addition to raising the basic contention in the text of his motion for summary judgment, respondent has also sought to support his underlying factual assertion through the submission of six evidentiary items. Three of these items consist of certified copies of the new judgments issued in each of the underlying criminal cases. The remaining three items are certified copies of the dockets from each of those cases.

{¶9} Although given an ample opportunity to do so, relator has failed to submit any type of response to the pending summary judgment motion. Hence, not only has no objection been asserted concerning the authenticity of the six certified copies, but no conflicting evidentiary materials have been presented. In light of this, this court finds that the evidentiary items before us readily establish that respondent has timely taken the necessary steps to render a final decision on relator's request for additional jail-time credit in each of the underlying cases.

{¶10} As respondent aptly notes in his Civ.R. 56(C) motion, this court has had numerous opportunities in previous original actions to review mandamus claims similar in nature to relator's sole claim. For example, in *State ex rel. Miller v. Lucci*, 11th Dist. No. 2006-L-241, 2007-Ohio-2316, the trial judge's final sentencing judgment contained a specific finding that the defendant was not entitled to any jail-time credit. Two months following the issuance of that first judgment, the defendant moved the trial judge for an award of one hundred twenty-six days of credit. After the judge had released a second

judgment denying that motion, the *Miller* defendant did not pursue a direct appeal from the latter ruling; instead, he brought an original action in mandamus before this court. In ultimately concluding that the *Miller* defendant had failed to state a viable claim for the writ, we began our legal analysis by summarizing the governing case law on this point:

{¶11} "A review of the pertinent case law in this state readily indicates that the prior precedent *** supports [the trial judge's] position. As one of the elements for a writ of mandamus, a relator must be able to establish that there is no alternative legal remedy he could pursue to achieve the identical result he seeks in the mandamus proceeding. *State ex rel. Duffy v. Pittman*, 11th Dist. No. 2006-P-0043, 2007-Ohio-346, at ¶15. In considering this element in the context of a mandamus action in which it was claimed that the trial court had miscalculated the amount of jail-time credit to which the criminal defendant was entitled, the Supreme Court of Ohio has held that such a writ can never lie to resolve this particular issue because the defendant could always litigate that point in a direct appeal from his conviction. See *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, at ¶10.

{¶12} "In applying the *Rankin* holding, this court has stated: 'The basic logic for [the *Rankin*] holding is that, in raising an alleged error in the calculation of jail time, the relator will not be able to satisfy the elements for the writ because his ability to appeal the trial court's calculation constitutes an adequate remedy at law. *** In other words, once a trial court has rendered a decision on the "credit" issue, the correctness of that decision can only be contested in a direct appeal from the judgment in which the decision was made. ***.' (Citations omitted.) *State v. Scranton*, 11th Dist. No. 2005-P-0020, 2005-Ohio-2886, at ¶6." Id. at ¶8-9.

{¶13} In conjunction with the foregoing discussion, our prior opinion in *Miller* also emphasized that, regardless of whether the "credit" ruling is set forth in the sentencing judgment or in a separate judgment disposing of a post-conviction motion on the issue, such a determination is considered a final order from which a direct appeal can be filed. Id. at ¶10. In this regard, *Miller* further stated that a mandamus case cannot be brought even when the thirty-day limit for filing a direct appeal has already elapsed; i.e., it is not permissible for a defendant to employ a mandamus case as a substitute for an appeal when he has essentially ignored the appellate process. Id. Accordingly, the prior case law of this court stands for the proposition that any dispute pertaining to a defendant's right to jail-time credit must be litigated as part of the "normal" course of the law in a direct appeal, not in a proceeding for an extraordinary writ. See, also, *State ex rel. Zimcosky v. Collins*, 11th Dist. No. 2009-L-141, 2010-Ohio-1716.

{¶14} In the instant action, a review of respondent's evidentiary materials shows that two of three sentencing judgments contained rulings concerning the amount of jail-time credit to which relator was entitled; as a result, he could have appealed the merits of both rulings at that time and litigated any questions as to the extent of his credit at the outset of his prison terms. Furthermore, the uncontested evidentiary materials establish that respondent has timely disposed of relator's motion for additional credit under each of the three criminal cases involving him. Therefore, since the new separate judgments on the "credit" motion are likewise final orders from which immediate appeals could be taken, relator had two distinct opportunities to pursue alternative legal remedies through which the "credit" dispute could have been fully reviewed. Under such circumstances, a writ of mandamus cannot lie because relator is unable to satisfy a required element for

the requested relief.

{¶15} Pursuant to Civ.R. 56, the moving party in a summary judgment exercise is entitled to prevail when he can show that: "(1) there are no genuine issues of fact remaining to litigate; (2) the moving party is entitled to judgment as a matter of law; and (3) even when the evidentiary materials are construed in a manner most favorable to the non-moving party, the nature of those materials are such that a reasonable person could only reach a conclusion against the non-moving party." *Zimcosky*, 2010-Ohio-1716, at ¶18. In light of the foregoing discussion, this court concludes that respondent has met each prong of this standard in regard to "adequate remedy" element for a writ of mandamus. Consequently, because relator, as the plaintiff in this proceeding, will never be able to establish all necessary elements of his sole claim, respondent is entitled to final judgment in this matter.

{¶16} Respondent's motion for summary judgment is granted. It is the order of this court that final judgment is hereby entered in favor of respondent as to relator's entire claim in mandamus.

DIANE V. GRENDELL, J., CYNTHIA WESTCOTT RICE, J., TIMOTHY P. CANNON, J., concur.