

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

Floyd C. McCann, :

Relator, : Case No. 04CA4

v. :

Richard Walton, Judge, : DECISION AND JUDGMENT ENTRY

Respondent. : **Released 4/26/04**

APPEARANCES :

Floyd C. McCann, pro se Relator.

J.B. Collier, Jr., Lawrence County Prosecuting Attorney, and Jeffrey M. Smith, Assistant Prosecuting Attorney, for Respondent.

Abele, J.

{¶1} On December 10, 2003, relator filed a complaint in mandamus with the Ross County Clerk of Courts seeking to compel respondent to credit him with an additional 105 days of jail-time credit on his sentence being served at the Chillicothe Correctional Institution. Subsequently, we discovered that the respondent was a judge of the Court of Common Pleas of Lawrence

County. By entry of January 28, 2004, we found that venue was improper in Ross County and ordered the case transferred to Lawrence County.

{¶2} On February 20, 2004, an answer and motion to dismiss was filed on behalf of the Lawrence County common pleas court. Attached to each was a copy of entry filed February 12, 2004, signed by Judge Frank J. McCown of that court, crediting relator with a total of 188 days jail-time credit, more than he sought in his complaint. Because the motion to dismiss presented matters outside the pleadings, we converted it to a motion for summary judgment, gave notice to the parties, and ordered relator to file his evidence and brief by April 6, 2004. He has not filed anything.

{¶3} It appears that the relief relator sought has been granted. Mandamus will not issue to compel an act already performed, *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163, applied to a complaint seeking a writ for additional jail-time credit, *State ex rel. Dozier v. Friedman* (Sept. 25 1997), Cuyahoga App. No. 72889.

{¶4} Accordingly, respondent's motion for summary judgment is GRANTED and a writ of mandamus is DENIED. Costs are taxed to relator. SO ORDERED.

Harsha, J., concurs.
Evans, J., not participating.

FOR THE COURT

Peter B. Abele, Administrative Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.