

[Cite as *Lumpkin ex rel. v. McNaney*, 2011-Ohio-196.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

EX REL, TROY LUMPKIN

Relator

-vs-

ERIN MCNANEY

Respondent

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 10-CA-96

OPINION

CHARACTER OF PROCEEDING:

Writ of Mandamus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

January 18, 2011

APPEARANCES:

For Relator

For Respondent

TROY LUMPKIN, PRO SE
#609-662
15708 McConnelsville Rd.
Calwell, Ohio 43724

NO APPEARANCE

Hoffman, J.

{¶1} Relator, Troy Lumpkin, has filed a Petition for Writ of Mandamus requesting this Court reopen his direct appeal due to ineffective assistance of counsel.

{¶2} For a writ of mandamus to issue, the relator must have a clear legal right to the relief prayed for, the respondents must be under a clear legal duty to perform the requested act, and relator must have no plain and adequate remedy in the ordinary course of law. *State, ex rel. Berger, v. McMonagle* (1983), 6 Ohio St.3d 28, 6 OBR 50, 451 N.E.2d 225.

{¶3} The Supreme Court has held, “A writ of mandamus will not be issued where there is a plain and adequate remedy in the ordinary course of the law.” *State ex rel. Peebles v. Anderson* (1995), 73 Ohio St.3d 559, 560, 653 N.E.2d 371, 371. Further, the Supreme Court has approved sua sponte dismissal of actions where the complainant cannot prevail on the facts alleged in the complaint stating, “*Sua sponte* dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint. *State ex rel. Bruggeman v. Ingraham* (1999), 87 Ohio St.3d 230, 231, 718 N.E.2d 1285, 1287.” *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 316, 725 N.E.2d 663, 667.

{¶4} Under the facts of this case as contained in the complaint, App.R. 26(B) provides an adequate remedy at law to petition the court to reopen Relator’s appeal. This is the very relief Relator seeks. Because the existence of an adequate remedy at law precludes the issuance of the writ of mandamus, we decline to issue the writ and dismiss this complaint for failure to state a claim upon which relief may be granted.

{¶15} CAUSE DISMISSED.

{¶16} COSTS TO RELATOR.

{¶17} IT IS SO ORDERED.

By: Hoffman, J.

Edwards, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
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EX REL, TROY LUMPKIN

Relator

-vs-

ERIN MCNANEY

Respondent

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JUDGMENT ENTRY

Case No. 10-CA-96

For the reasons stated in our accompanying Memorandum-Opinion, the Petition for Writ of Mandamus is dismissed.

CAUSE DISMISSED.

COSTS TO RELATOR.

IT IS SO ORDERED.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ John W. Wise
HON. JOHN W. WISE