

[Cite as *State ex rel. Perdue v. Deweese*, 2012-Ohio-2858.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX. REL
IVORY PERDUE

Relator

-vs-

JUDGE JAMES DEWEESE, ET AL.

Respondent

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Julie A. Edwards, J.

Case No. 12CA19

OPINION

CHARACTER OF PROCEEDING:

Writs of Mandamus and Procedendo

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

June 21, 2012

APPEARANCES:

For Relator

For Respondent

IVORY PERDUE
P.O. Box 788 (463-864)
Mansfield, Ohio 44901-0788

JILL M. COCHRAN
Assistant Richland County Prosecutor
38 South Park Street, 2nd Floor
Mansfield, Ohio 44902

Hoffman, J.

{¶1} Relator, Ivory Perdue, has filed a Complaint for Mandamus and/or Procedendo requesting this Court order Respondent DeWeese to resentence Relator. The basis of Relator's claim is that he believes his sentence is void because the trial court did not issue a determination as to whether the Relator's convictions were allied offenses of similar import.

{¶2} Relator filed a motion with the trial court raising this issue. The trial court denied the motion on the basis of res judicata. Relator did not file a notice of appeal. Rather, he filed the instant cause of action.

{¶3} The exact issue raised herein was recently addressed by the Supreme Court in *State ex rel. Hudson v. Sutula* 131 Ohio St.3d 177, 177, 962 N.E.2d 798, 798 (Ohio,2012). In *Hudson*, the Relator sought writs of mandamus and procedendo to compel the trial court to resentence him to "account for his allied offenses." *Id.* The Court held, "Neither mandamus nor procedendo will issue if the party seeking extraordinary relief has an adequate remedy in the ordinary course of law. *State ex rel. Jelinek v. Schneider*, 127 Ohio St.3d 332, 2010-Ohio-5986, 939 N.E.2d 847, ¶ 13. Hudson had an adequate remedy by way of appeal to raise the claimed sentencing error. See generally *Manns v. Gansheimer*, 117 Ohio St.3d 251, 2008-Ohio-851, 883 N.E.2d 431, ¶ 6 ("sentencing errors are not jurisdictional and are not remediable * * * by extraordinary writ"); compare **799 *Smith v. Voorhies*, 119 Ohio St.3d 345, 2008-Ohio-4479, 894 N.E.2d 44, ¶ 10 ("allied-offense claims are nonjurisdictional and are not cognizable in habeas corpus")." *Id.*

{¶4} Because Relator has or had an adequate remedy at law, neither mandamus nor procedendo lie. For this reason, the instant complaint is dismissed for failure to state a claim upon which relief may be granted.

By: Hoffman, J.

Gwin, P.J. and

Edwards, J. concur

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

s/ W. Scott Gwin
HON. W. SCOTT GWIN

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

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
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JUDGMENT ENTRY

Case No. 12CA19

For the reasons stated in our accompanying Opinion, the instant complaint is dismissed. Costs to Relator.

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

s/ W. Scott Gwin
HON. W. SCOTT GWIN

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