

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio ex rel. Augusto Duran

Court of Appeals No. WD-04-077

Relator

v.

Judge Reeve Kelsey

DECISION AND JUDGMENT ENTRY

Respondent

Decided: November 24, 2004

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Augusto Duran, pro se.

* * * * *

SINGER, J.

{¶ 1} Relator, Augusto Duran, has filed an “application for writ pursuant to section 2731.04 of the Ohio Revised Code.” Relator seeks a writ of mandamus to compel Wood County Common Pleas Court Judge, Reeve Kelsey, to adhere to a plea agreement entered into August 2, 2000.

{¶ 2} A writ of mandamus is an extraordinary remedy. To be entitled to a writ of mandamus, a relator must establish a clear legal right to the relief requested, a clear legal duty to perform the requested act on the part of the respondent, and that the relator has no plain and adequate remedy at law. *State ex rel. Crabtree v. Ohio Bur. of Workers' Comp.* (1994), 71 Ohio St.3d 504, 510.

{¶ 3} In support of his writ, relator has submitted a plea agreement form wherein the prosecutor agreed to recommend that relator receive a five year prison term in exchange for relator's guilty plea. Relator contends that, pursuant to the plea agreement, respondent agreed to sentence relator to five years. Thus, respondent erred when he ultimately sentenced relator to a six year prison term. We disagree.

{¶ 4} A review of the plea agreement shows that respondent did not agree to sentence appellant to any specific prison term. In fact, respondent is not a party to the agreement. Respondent's signature appears at the end of the plea agreement document signifying only his acceptance of relator's guilty plea. Moreover, it is well-established that a court is not bound to accept the prosecution's recommended sentence as part of a negotiated plea agreement. *State v. Rink*, 6th Dist. No. L-02-1307, 2003 Ohio 4097, at P5 (citation omitted).

{¶ 5} It is clear from the documents relator submitted with his writ that he has no legal right to the relief requested. Therefore, relator's application for a writ of mandamus is denied. This original action is ordered dismissed at relator's cost.

WRIT DENIED.

State of Ohio ex rel. Duran v. Judge Kelsey
WD-04-77

Peter M. Handwork, P. J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE