

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

James Franklin Galloway

Court of Appeals No. L-09-1221

Relator [Relator]

v.

Judge Stacy Cook

DECISION AND JUDGMENT

Respondent

Decided: February 23, 2010

* * * * *

James Franklin Galloway, pro se.

Julia R. Bates, Lucas County Prosecuting Attorney, John A. Borell
and Karlene D. Henderson, Assistant Prosecuting Attorneys, for
respondent.

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HANDWORK, J.

{¶ 1} This matter is before the court upon opposing motions for summary judgment by both relator, James Franklin Galloway, and respondent, Judge Stacy Cook. Also before the court is a motion filed by relator on December 28, 2009, requesting that we deny respondent's request for an extension of time. This motion appears to relate to

the respondent's renewed motion to dismiss, which has already been denied, or to proceedings in the trial court. Therefore, we hereby deny relator's motion.

{¶ 2} Also before the court is respondent's motion for an extension of time to respond to relator's response to respondent's motion for summary judgment until March 1, 2010. Respondent's motion is hereby denied.

{¶ 3} We now turn to the motions for summary judgment. In his application for a writ of mandamus, Galloway asserted that respondent, Judge Stacy Cook, of the Lucas County Court of Common Pleas, failed to hold an evidentiary hearing regarding his motion opposing a change of sex offender reclassification pursuant to Senate Bill 10, which he had filed January 18, 2008.

{¶ 4} Relator had been convicted in 1990 by a jury of three counts of rape and one count of gross sexual imposition, along with a prior offense of violence specification. He was sentenced to consecutive terms of imprisonment. Relator's appeal from the judgment of conviction and sentencing was affirmed by this court in 1991. In 1994, relator sought post-conviction relief, which was denied.

{¶ 5} In January 2008, relator filed a motion in the trial court objecting to his reclassification as a Tier II sexual offender pursuant to Senate Bill 10, the "Adam Walsh Act." Relator also moved to dismiss the charges against him asserting his innocence and errors in the criminal proceedings.

{¶ 6} On March 7, 2008, the trial court sua sponte stayed the proceedings because a class action challenging the constitutionality of Senate Bill 10 had been filed in federal

court. Nonetheless, relator moved for judgment on the pleadings on March 18, 2008. Again on June 10, 2008, the proceedings were ordered stayed. On October 29, 2008, relator moved for an evidentiary hearing, which was stricken on December 4, 2008 because the action had been previously stayed. The stay was lifted on December 18, 2008, and relator was ordered to file any additional argument in support of his motion by January 13, 2009. Over the course of the next year, relator filed several motions for summary judgment and for an evidentiary hearing. The case was again stayed on November 25, 2009, pending the disposition of *State v. Bodyke*, 6th Dist. Nos. H-07-040, H-07-041, H-07-042, 2008-Ohio-6387, which was on appeal before the Ohio Supreme Court. The Ohio Supreme Court heard oral arguments in that case in November 2009.

{¶ 7} Meanwhile, relator filed the instant original action on August 26, 2009, to compel the trial court to hold an evidentiary hearing regarding the change of sex offender reclassification pursuant to Senate Bill 10. In his motion for summary judgment, relator sets forth the arguments that he would make in the lower court proceeding and requests that we either compel the lower court to hold an evidentiary hearing or assume jurisdiction over the underlying case and render a decision on the merits.

{¶ 8} Respondent argues that relator has failed to demonstrate that the trial court abused its discretion, that relator is not harmed in any way by the stay of the proceedings pending a ruling in the *Bodyke* case, and that a writ of mandamus cannot be issued to control judicial discretion even if that discretion is abused.

{¶ 9} The writ of mandamus is an extraordinary writ and, therefore, is only available where the court finds "that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that relator has no plain and adequate remedy at law." *State ex rel. Middletown Bd. of Edn. v. Butler Cty. Budget Comm.* (1987), 31 Ohio St.3d 251, 253, quoting *State ex rel. Westchester Estates, Inc. v. Bacon* (1980), 61 Ohio St.2d 42, paragraph one of the syllabus.

{¶ 10} Summary judgment is appropriate pursuant to Civ.R. 56(C), when it is clear "* * * (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor." *Harless v. Willis Day Warehousing Co., Inc.* (1978), 54 Ohio St.2d 64, 66-67.

{¶ 11} In this case, relator has failed to establish that respondent is under a clear legal duty to perform the requested act. The granting of a stay or continuance falls solely within the trial court's discretionary powers in this type of case as part of its inherent power to exercise control over its docket. *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, ¶ 118; *State v. Unger* (1981), 67 Ohio St.2d 65, syllabus; and *State v. Hochhausler* (1996), 76 Ohio St.3d 455, 464, 1996-Ohio-374. A writ of mandamus cannot require the lower court to exercise its discretionary power in some manner or to

correct an abuse of discretion. The court's duty is only to exercise its discretion. R.C. 2731.03 and *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 119, 2009-Ohio-4805, ¶ 17. Furthermore, these original action proceedings cannot be used as a supplement to an appeal of the original conviction. *State ex rel. Bd. of Edn. of the Middletown City School Dist. v. Butler Cty. Budget Comm.* (1987), 31 Ohio St.3d 251, syllabus.

{¶ 12} Having concluded that Galloway does not have a clear legal right to the relief prayed for, we grant the motion of Judge Stacy Cook for summary judgment and deny Galloway's motion for summary judgment. Galloway's petition for a writ of mandamus is denied and this action is dismissed on the ground that Judge Cook does not have a clear legal duty to perform the requested act. Galloway is ordered to pay the court costs incurred. Pursuant to Civ.R. 58(B), the clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

WRIT DENIED.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
