

[Cite as *State ex rel. White v. Suster*, 2002-Ohio-2263.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 81031

STATE OF OHIO, ex rel	:	
DEWIGHT WHITE	:	
	:	
Plaintiff-appellee	:	JOURNAL ENTRY
	:	and
vs.	:	OPINION
	:	
RONALD SUSTER, JUDGE	:	
COURT OF COMMON PLEAS	:	
CUYAHOGA COUNTY, OHIO	:	
	:	
Defendant-appellant	:	

DATE OF JOURNALIZATION : MAY 3, 2002

CHARACTER OF PROCEEDING : MANDAMUS

JUDGMENT : WRIT DENIED.

APPEARANCES:

For plaintiff-appellee	:	WILLIAM D. MASON Cuyahoga County Prosecutor DIANE SMILANICK, Assistant Justice Center, Courts Tower 1200 Ontario Street, 8 th Floor Cleveland, Ohio 44113
For defendant-appellant	:	DEWIGHT WHITE, pro se #A331-976 Post office Box 788 Mansfield, Ohio 44901

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JUDGE TERRENCE O'DONNELL:

On March 19, 2002, the petitioner, Dewight White, filed a prose application seeking a writ of mandamus and an alternative writ from our court to compel Judge Ronald Suster to rule on his motion to withdraw his guilty plea, which White had filed on October 15, 2001 in the underlying case, *State of Ohio v. Dewight White*, Cuyahoga County Common Pleas Court Case No. CR-333432. In response to this application, the respondent, through the Cuyahoga County Prosecutor's Office, moved for summary judgment on the writ, alleging that the statements in the application were incorrct and asserting that the court had already ruled on the matter. The prosecutor attached a certified copy of a November 9, 2001 journal entry, which stated: "Motion to Dismiss Motion to withdraw guilty plea is granted." White never filed a brief in opposition to respondent's summary judgment motion in our court.

The requisites for obtaining relief in mandamus are well established: (1) the relator must have a clear legal right to the requested relief; (2) the respondent must have a clear legal duty to perform the requested relief; and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is

grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914.

In this case, respondent dismissed the motion to withdraw the guilty plea. Accordingly, the court disposed of the motion, and White has a ruling in connection with his request to withdraw his plea. Thus, this action is moot.

Therefore, we grant respondent's motion for summary judgment and deny the application for a writ of mandamus and the application for an alternative writ. Costs assessed against relator. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

TERRENCE O'DONNELL
JUDGE

PATRICIA A. BLACKMON, P.J. CONCURS

JAMES J. SWEENEY, J. CONCURS