

[Cite as *State ex rel. Jaffal v. Calabrese*, 2004-Ohio-6616.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 85408

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
AHMED A. JAFFAL	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
ANTHONY CALABRESE, JR., JUDGE	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: DECEMBER 6, 2004

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Dismissed.
Motion No. 365486
Order No. 366330

APPEARANCES:

For Relator: AHMED A. JAFFAL, pro se
Inmate No. 433-457
P.O. Box 788
Mansfield, Ohio 44901

For Respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: T. Allan Regas
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street

Cleveland, Ohio 44113

JUDGE FRANK D. CELEBREZZE, JR.:

{¶ 1} On October 15, 2004, relator Ahmed A. Jaffal commenced this mandamus action against respondent Judge Anthony Calabrese, Jr. to compel him to vacate his sentence in *State v. Jaffal*, Cuyahoga County Court of Common Pleas Case No. CR-422741. On November 1, 2004, respondent, through the Cuyahoga County Prosecutor, filed a motion to dismiss. For the following reasons, we grant the respondent's motion to dismiss.

{¶ 2} A review of the petition indicates that Jaffal pled guilty to one count of Conspiracy to Commit Aggravated Murder and one count of Conspiracy to Commit Aggravated Arson. Although he claims he never before served a prison term, Jaffal was sentenced to two concurrent terms of eight years on each count. Jaffal now claims that pursuant to *Blakely v. Washington* (2004), 124 S.Ct. 2531, 159 L. Ed.2d 403, R.C. 2929.14 is unconstitutional and his sentence is therefore void. A review of this court's docket also reveals that Jaffal did not appeal his sentencing.

{¶ 3} In order for this court to issue a writ of mandamus, a relator must establish that: 1) the relator possesses a clear legal right to the relief prayed; 2) the respondent possesses a clear legal duty to perform the requested act; and 3) the relator possesses no plain and adequate remedy in the ordinary course of the law. *State ex rel. Manson v. Morris* (1993), 66 Ohio St. 3d 440, 613 N.E.2d

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{¶ 4} 232, citing *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St. 3d 28, 451 N.E.2d 225.

{¶ 5} In support of the motion to dismiss, respondent argues that Jaffal failed to establish that he possesses a clear legal right to the requested relief. We agree. As this court stated in *State v. Ford* (Oct. 21, 2004), Cuyahoga App. No. 84138, 2004-Ohio-5610, “*Blakely* concerns the impropriety of a trial court’s enhancement of a penalty for a crime beyond the maximum sentence, however, not the minimum.” Clearly, *Blakely* is not applicable to this matter as Jaffal was not sentenced beyond the maximum sentence.

{¶ 6} We further agree with respondent that Jaffal possesses an adequate remedy at law by filing a delayed appeal with this court. *State ex rel. Gadsden v. Lioi, Judge*, 93 Ohio St.3d 574, 2001-Ohio-1611, 757 N.E.2d 355; *Grundstein v. Judge Carroll* (May 3, 2004), Cuyahoga App. No. 83885, 2004-Ohio-2346; *State ex rel Farraj v. Ohio* (Oct. 7, 2004), 2004-Ohio-5377.

{¶ 7} Accordingly, we grant the respondent’s motion to dismiss. Relator to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ dismissed.

FRANK D. CELEBREZZE, JR.
JUDGE

PATRICIA A. BLACKMON, P.J. CONCURS

KENNETH A. ROCCO, J., CONCURS