

[Cite as *State ex rel. Martin v. Mannen*, 2006-Ohio-6757.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 89007**

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**STATE OF OHIO EX REL.,  
TREMAINE MARTIN**

RELATOR

VS.

**JUDGE ANN T. MANNEN**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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WRIT OF MANDAMUS  
MOTION NO. 391243  
ORDER NO. 391514

**RELEASE DATE:** December 20, 2006

**ATTORNEY FOR RELATOR:**

Tramaine E. Martin  
Inmate No. 494-327  
Belmont Correctional Inst.  
P.O. Box 540  
St. Clairsville, Ohio 43950

**ATTORNEY FOR RESPONDENT,  
JUDGE ANN T. MANNEN, AND PARTY-  
RESPONDENT, JUDGE NANCY R.  
MCDONNELL:**

William D. Mason  
Cuyahoga County Prosecutor  
Diane Smilanick  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

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JUDGE SEAN C. GALLAGHER:

{¶ 1} On November 14, 2006, relator, Tremaine Martin, filed a writ of mandamus against Judge Ann Mannen. Martin seeks to have this court vacate his conviction and sentence in the underlying matter of *State v. Martin*, Cuyahoga County Court of Common Pleas Case No. CR-468883. Thereafter, on November 20, 2006, this court, sua sponte, added Presiding Judge Nancy R. McDonnell as a party-respondent pursuant to Civ.R. 19(A).<sup>1</sup> On December 4, 2006, Mannen filed a motion to dismiss and on December 6, 2006, respondents Mannen and McDonnell provided notice to this court of Judge Mannen's response to this court's previous ruling of July 26, 2006. For the following reasons, we deny the motion to dismiss and deny Martin's request for a writ of mandamus.

{¶ 2} In his petition, Martin claims that his conviction and sentence should be vacated because the lower court failed to pronounce the verdict within forty-eight hours as required by R.C. 2938.11(F). Martin further argues that he has no adequate remedy at law since Judge Mannen failed to issue findings of fact and conclusions of law pertaining to the motion for post-conviction relief that he filed in the underlying matter.

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<sup>1</sup> On July 26, 2006, this court granted Martin a writ of procedendo against Judge Mannen and ordered her to immediately issue a ruling pursuant to R.C. 2953.21 (E) and (G), with regard to the petition for post-conviction relief in *State v. Martin*, supra. However, our review of the lower court docket revealed that Judge Mannen failed to comply with this order. Accordingly, this court, sua sponte, added Presiding Judge Nancy R. McDonnell as a party-respondent pursuant to Civ.R. 19(A).

{¶ 3} In order for this court to issue a writ of mandamus, Martin must establish that he has a clear legal right to the requested relief; that the respondents have a clear legal duty to perform the requested relief; and there must be no adequate remedy at law. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not be issued in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Commission* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Cannole v. Cleveland Board of Education* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850.

{¶ 4} In this matter, Martin failed to establish that he has a clear legal right to the requested relief since the language in R.C. 2938.11(F) is considered directory, not mandatory. *City of Cleveland v. Criss* (Dec. 10, 1998), Cuyahoga App. No. 72862. Additionally, since Judge Mannen issued findings of fact and conclusions of law, Martin now possesses an adequate remedy at law thru an appeal. *Mason v. Eckle* (1960), 171 Ohio St. 192, 168 N.E.2d 409; *In re Knight* (1944), 144 Ohio St. 257, 58 N.E.2d 671.

{¶ 5} Accordingly, we deny Martin's request for a writ of mandamus. Costs to respondents. It is further ordered that the Clerk of the Eighth District Court of Appeals shall serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Writ denied.

SEAN C. GALLAGHER,  
PRESIDING JUDGE

KENNETH A. ROCCO, J., and  
PATRICIA A. BLACKMON, J., CONCUR