

[Cite as *State ex rel. Hughley v. Cuyahoga Cty. Common Pleas Court*, 2008-Ohio-5882.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92071**

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**STATE OF OHIO, EX REL.,  
KEVIN HUGHLEY**

RELATOR

vs.

**CUYAHOGA CTY. C.P. COURT,  
TIM MCMONAGLE, J.**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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WRIT OF MANDAMUS  
MOTION NO. 413933  
ORDER NO. 414873

**RELEASE DATE:** November 10, 2008

**FOR RELATOR:**

Kevin Hughley, pro se  
Inmate No. 532-743  
Southeastern Correctional Inst  
5900 B.I.S. Road  
Lancaster, Ohio 43130

**ATTORNEYS FOR RESPONDENT:**

William D. Mason  
Cuyahoga County Prosecutor

By: Lisa Reitz Williamson  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

PATRICIA A. BLACKMON, J.:

{¶ 1} Kevin Hughley has filed a complaint for a writ of mandamus. Hughley seeks an order from this court, which requires Judge Timothy McMonagle to conduct a resentencing vis-a-vis allegedly defective sentences of incarceration as originally rendered in *State v. Hughley*, Cuyahoga County Court of Common Pleas Case Nos. CR-481899 and CR-462014. Judge McMonagle has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} Initially, we find that Hughley has failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint for a writ of mandamus be supported by a sworn affidavit that specifies the details of his claim. The failure of Hughley to

comply with the supporting affidavit requirement of Loc.App.R. 45(B)(1(a) requires the dismissal of his complaint for a writ of mandamus.<sup>1</sup>

{¶ 3} In addition, we find that Hughley has failed to establish that he is entitled to a writ of mandamus. In order for this court to issue a writ of mandamus, Hughley must establish that: (1) he possesses a clear right to a resentencing; (2) Judge McMonagle possesses a clear legal duty to resentence Hughley; and (3) there exists no other adequate remedy in the ordinary course of the law.<sup>2</sup> Moreover, mandamus is an extraordinary remedy which is to be exercised with great caution and only when the right is clear. Mandamus will not issue in doubtful cases.<sup>3</sup>

{¶ 4} In the case sub judice, Hughley has failed to establish that he possesses any legal right to resentencing or that Judge McMonagle possesses any legal duty to resentence Hughley in Cuyahoga County Court of Common Pleas Case Nos. CR-481899 and CR-462014. Finally, Hughley has already availed himself of an adequate remedy at law, since he has filed a direct appeal to this court in Cuyahoga

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<sup>1</sup> *State ex rel. Smith v. McMonagle* (Jul. 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

<sup>2</sup> *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 374 N.E.2d 641; *State ex rel. National City Bank v. Bd. of Edn.* (1977), 52 Ohio St.2d 81, 369 N.E.2d 1200.

<sup>3</sup> *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Connoles v. Cleveland Bd. Of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850.

Appellate Case No. 90323. Any alleged sentencing defects should be raised through his direct appeal.<sup>4</sup>

{¶ 5} Accordingly, we grant Judge McMonagle’s motion for summary judgment. Costs to Hughley. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Writ denied.

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PATRICIA A. BLACKMON, JUDGE  
MARY EILEEN KILBANE, P.J., and  
MARY J. BOYLE, J., CONCUR

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<sup>4</sup>*State ex rel. Bradford v. Trumbull Cty. Court*, 64 Ohio St.3d 502, 1992-Ohio-132, 597 N.E.2d 116; *State ex rel. Brooks v. Gaul* (Nov. 4, 1999), Cuyahoga App. No. 76937.