

[Cite as *State ex rel. Sheffield v. Cuyahoga Cty. Court of Common Pleas*, 2009-Ohio-3590.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93508

**STATE OF OHIO, EX REL.,
MICHAEL SHEFFIELD**

RELATOR

VS.

**CUYAHOGA COUNTY COURT
OF COMMON PLEAS**

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

WRIT OF MANDAMUS

ORDER NO. 423802

RELEASE DATE: July 22, 2009

FOR RELATOR

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MARY EILEEN KILBANE, P.J.:

{¶ 1} On June 22, 2009, the relator, Michael Sheffield, commenced this mandamus action against the respondent, the Cuyahoga County Court of Common Pleas, to compel the court “to reverse any prison term later imposed under R.C. 2929.15(B) for relator’s violation of community control conditions.” For the following reasons, this court, sua sponte, dismisses the application for a writ of mandamus.

{¶ 2} In the underlying case, *State of Ohio v. Michael Sheffield*, Cuyahoga County Common Pleas Court Case No. CR-475002, in March 2006, Sheffield pleaded guilty to one count of misuse of a credit card, one count of forgery and nineteen counts of theft. At the sentencing hearing on April 10, 2006, the judge sentenced Sheffield to five years of community control sanctions. At the end of the

sentencing hearing the judge warned Sheffield that if he violated the community control sanctions, the judge would send him to prison. Specifically, the judge said: "Let me spell that out for you. You have four F3's. [Five] years on each F3. [Eighteen] months on 15 F4's. You have two F5's, [twelve] months for each of those. I'll run them consecutive." However, the April 12, 2006 sentencing journal entry read: "Violation of the terms and conditions may result in more restrictive sanctions, or a prison term of 5 years as approved by law."¹ In August 2006, the trial judge ruled that Sheffield had violated community control sanctions and sentenced him to prison for eight years.

{¶ 3} Sheffield now complains that his sentence violates R.C. 2929.19(B)(5), R.C. 2929.15(B) and *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746, 814 N.E.2d 837 and should be reversed. R.C. 2929.19(B)(5) provides in pertinent part that when imposing a community control sanction, the trial judge "shall indicate the specific prison term that may be imposed as a sanction for the violation ***." R.C. 2929.15(B) provides in pertinent part that the prison term imposed for violating community control sanctions "shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing ***." In *Brooks*, the Supreme Court of Ohio ruled that pursuant to those statutes, "a trial court sentencing an

¹ On September 21, 2006, the trial judge issued a nunc pro tunc entry for April 10, 2006, that violations of community control sanctions may result in a prison term of 44 years and six months. The court notes that this equals the amount of time the sentence would be, if all counts were run consecutive as promised by the trial judge.

offender to a community control sanction must, at the time of the sentencing, notify the offender of the specific prison term that may be imposed for a violation of the conditions of the sanction, as a prerequisite to imposing a prison term on the offender for a subsequent violation.” Paragraph two of the syllabus. The Supreme Court of Ohio elaborated that the trial judge must tell the offender in “straightforward and affirmative language” what the prison term will be for violating the community control sanctions. That means a fixed number of months or years, and not a range or “up to” so many years. Moreover, this must be done at the sentencing hearing.

{¶ 4} Sheffield now argues that the trial court, at the very least, erred when it sentenced him to eight years in prison when the court did not specify a definite term of imprisonment at the sentencing hearing and when the eight years imposed exceeded the five years stated in the journal entry. He further notes that in *Brooks* the Supreme Court of Ohio stated that when the trial court did not give proper notification and “the offender then appeals after a prison term is imposed under R.C. 2929.15(B), the matter must be remanded to the trial court for a resentencing under that provision with a prison term not an option.” 2003-Ohio-4746, ¶33. Accordingly, Sheffield asks this court to issue a peremptory writ of mandamus to correct the trial court’s improper sentence.

{¶ 5} The requisites for 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. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Industrial Commission of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Tommie Jerninghan v. Judge Patricia Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787. Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108 and *State ex rel. Boardwalk Shopping Center, Inc. v. Court of Appeals for Cuyahoga County* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue 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. Connole v. Cleveland Board of Education* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850; and *State ex rel. Dayton-Oakwood Press v. Dissinger* (1940), 32 Ohio Law Abs. 308.

{¶ 6} In the present case mandamus is not the proper remedy, because Sheffield has or had adequate remedies at law through appeal, delayed appeal, or postconviction relief, all of which preclude mandamus. In *Jimison v. Wilson*, 106 Ohio St.3d 342, 2005-Ohio-5143, 835 N.E.2d 34, the petitioner brought a habeas corpus action seeking his immediate release for the trial court's failure to comply with R.C. 2929.15(B) and 2929.19(B)(5). The Supreme Court of Ohio affirmed the dismissal of the petition, because "sentencing errors by a court that had proper jurisdiction cannot be remedied by extraordinary writ." 2005-Ohio-5143, ¶9. Similarly, in *Brooks*, the supreme court's use of the language "the offender then appeals after a prison term is imposed under R.C. 2929.15(B)," shows that appeal is the proper remedy for this issue. See also, *State ex rel. Sneed v. Anderson*, 114 Ohio St.3d 11, 2007-Ohio-2454, 866 N.E.2d 1084.

{¶ 7} The relator has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the relator within the previous five years in any state or federal court. The relator's failure to comply with R.C. 2969.25 warrants dismissal of the complaint for a writ of mandamus. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594 and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. Relator also did not comply with R.C. 2969.25(C) which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. This also is sufficient

reason to deny the mandamus, deny indigency status and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842 and *State ex rel. Hunter v. Cuyahoga County Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420.

{¶ 8} Accordingly, this court dismisses the relator's application for a writ of mandamus. Relator to pay costs. 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).

MARY EILEEN KILBANE, PRESIDING JUDGE

CHRISTINE T. MCMONAGLE, J., and
MELODY J. STEWART, J., CONCUR