

[Cite as *State ex rel. Carnail v. McCormick*, 2009-Ohio-3884.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93524

**STATE OF OHIO, EX REL.,
E'YEN CARNAIL**

RELATOR

VS.

HON. TIMOTHY MCCORMICK, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 424141
ORDER NO. 424750

RELEASE DATE: August 4, 2009

FOR RELATOR

E'yen Carnail, pro se
Inmate No. 378-992
Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio 44901-8107

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

BY: James E. Moss
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} On June 25, 2009, E'Yen Carnail filed a complaint in mandamus against Judge Timothy McCormick¹ asking this court to order Judge McCormick to conduct a new sentencing hearing in the matter of *State v. Carnail*, Cuyahoga County Court of Common Pleas Case No. CR-372072, so that the proper requirements of postrelease control may be added. In the alternative, Carnail requests this court to order Judge McCormick to issue a final appealable order that Carnail can appeal. On July 13, 2009, Judge McCormick, through the Cuyahoga County Prosecutor, filed

¹ Carnail also named the Cuyahoga County Court of Common Pleas in his original complaint, but pursuant to Carnail's motion to amend the caption of his complaint, the Court was removed as a respondent.

a motion to dismiss that was opposed by Carnail. For the following reasons, we grant the motion to dismiss.

{¶ 2} In order for this court to issue a writ of mandamus, Carnail must establish that he has a clear legal right to the requested relief; that the respondent has a clear legal duty to perform the requested relief; and there is no adequate remedy at law. *State ex rel. Manson v. Morris* (1993), 66 Ohio St.3d 440, 613 N.E.2d 232, citing *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28, 451 N.E.2d 225. Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. “The duty to be enforced by a writ of mandamus must be specific, definite, clear and unequivocal.” *State ex rel. Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 205, 614 N.E.2d 827. 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 Comm.* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Cannole v. Cleveland Bd. of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850.

{¶ 3} Additionally, if a relator had an adequate remedy at law, 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; *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86; *State ex rel. Provolone Pizza, LLC v. Callahan*, Cuyahoga App. No.

88626, 2006-Ohio-660; *State ex rel. Grahek v. McCafferty*, Cuyahoga App. No. 88614, 2006-Ohio-4741.

{¶ 4} As stated by the Supreme Court of Ohio, “sentencing errors by a court that had proper jurisdiction cannot be remedied by extraordinary writ.” *State ex rel. Jaffal v. Calabrese*, 105 Ohio St.3d 440, 2005-Ohio-2591. Furthermore, Carnail has or had adequate remedies at law by way of appeal or postconviction relief. *Id.*, citing *Smith v. Walker*, 83 Ohio St.3d 431, 1998-Ohio-30. The existence of adequate remedies at law prohibit us from granting the writ.

{¶ 5} We also deny Carnail’s alternative request. A review of the lower court docket reveals that Judge McCormick issued a final appealable order when he denied Carnail’s motion to correct illegal sentence on December 9, 2008. Consequently, Carnail’s alternative request is moot. *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163; *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 278, 658 N.E.2d 723.

{¶ 6} Accordingly, we grant the motion to dismiss. Costs to relator. 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).

Complaint dismissed.

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR