

[Cite as *State ex rel. Hughley v. McMonagle*, 2009-Ohio-4543.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93366

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

RELATOR

VS.

C.C.C. TIMOTHY MCMONAGLE, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 423173
ORDER NO. 425624

RELEASE DATE: September 1, 2009

FOR RELATOR

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

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

PATRICIA A. BLACKMON, J.:

{¶ 1} Relator, Kevin Hughley, is the defendant in *State v. Hughley*,¹ which has been assigned to respondent. After this court remanded Hughley's appeal to the court of common pleas,² respondent resentenced Hughley in a journal entry received for filing on December 24, 2008. After Hughley appealed the December 24 entry,³ respondent issued a nunc pro tunc entry on March 9, 2009, specifying that, after Hughley served his felony prison sentence, he would be

¹ Cuyahoga County Court of Common Pleas Case No. CR-462014.

² *State v. Hughley*, Cuyahoga App. No. 90323, 2008-Ohio-6146.

³ Case No. 92588.

returned to the Cuyahoga County Jail to serve the misdemeanor sentences.⁴ Additionally, the March 9 entry indicated that Hughley's 304 days jail time credit would be applied to his misdemeanor sentences. Hughley appealed the nunc pro tunc entry.⁵ This court consolidated Hughley's appeals⁶ which are scheduled for hearing on September 22, 2009.

{¶ 2} Hughley requests that this court issue a writ of mandamus compelling respondent to vacate the nunc pro tunc judgment entry. Respondent has filed a motion for summary judgment and Hughley has filed a brief in opposition. For the reasons stated below, we grant the motion for summary judgment.

{¶ 3} The fundamental criteria for issuing a writ of mandamus are well-established. "In order to be entitled to a writ of mandamus, relator must show (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State, ex rel. National City Bank v. Bd. of Education* (1977), 52 Ohio St. 2d 81, 369 N.E.2d

⁴ Case No. CR-462014.

⁵ Case No. 93070.

⁶ Case Nos. 92588 and 93070.

1200.”⁷ Of course, all three of these requirements must be met in order for mandamus to lie.

{¶ 4} An appellant may challenge a sentencing error by way of appeal.⁸ Additionally, it is well-established that a defendant may challenge a court’s determination of the number of jail time credit days by way of an appeal and that appeal is an adequate remedy.⁹

{¶ 5} Similarly, in this action, Hughley not only has an adequate remedy by way of appeal, he is pursuing an appeal from the nunc pro tunc entry. Relief in mandamus is not, therefore, appropriate.

{¶ 6} Accordingly, respondent’s motion for summary judgment is granted. 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.¹⁰

Writ denied.

⁷ *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St. 2d 41, 42, 374 N.E.2d 641.

⁸ See, e.g., *State v. Norris*, 80 Ohio St.3d 296-297, 1997-Ohio-115, 685 N.E.2d 1250 (Relator requested the court of appeals to issue a writ of mandamus compelling the court of common pleas to vacate a nunc pro tunc sentencing entry. The court of appeals denied the writ and the Supreme Court affirmed.)

⁹ *State ex rel. Ponsky v. Koch*, Cuyahoga App. No. 92437, 2009-Ohio-339, at ¶3 (denying the relator’s request for relief in mandamus to compel respondent judge of the court of common pleas to issue a journal entry increasing the number of jail time credit days).

¹⁰ Civ.R. 58(B).

PATRICIA A. BLACKMON, PRESIDING JUDGE

MELODY J. STEWART, J., AND
ANN DYKE, J., CONCUR