

[Cite as *Moore v. Sutula*, 2009-Ohio-5234.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93774

LATVIUS MOORE

RELATOR

VS.

JUDGE KATHLEEN A. SUTULA

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 425857
ORDER NO. 425930

RELEASE DATE: September 28, 2009

FOR RELATOR

Latvius Moore, pro se
Inmate No. A399-222
Chillicothe Correctional Inst
P.O. Box 5500
Chillicothe, Ohio 45301

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

JUDGE MARY J. BOYLE:

{¶ 1} On August 14, 2009, relator Latvius Moore commenced this mandamus action against Judge Kathleen Sutula. The facts before this court indicate that Moore was convicted of one count of aggravated robbery; one count of felonious assault; one count of aggravated burglary; and one count of kidnaping. On appeal, Moore's convictions were affirmed in part but remanded for re-sentencing due to the lower court's failure to make required findings for imposition of more than a minimum sentence. See *State v. Moore*, Cuyahoga App. No. 79353, 2002-Ohio-2133.

{¶ 2} Pursuant to this court's remand, Moore was re-sentenced and again appealed. On appeal, Moore's case was again remanded for re-sentencing

because the lower court failed to make the requisite findings before imposing consecutive sentences. See *State v. Moore*, Cuyahoga App. No. 81724, 2003-Ohio-3349.

{¶ 3} Moore was once again re-sentenced and on appeal, Moore's sentence was again remanded because the lower court failed to make the appropriate findings pursuant to *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531. See *State v. Moore*, Cuyahoga App. No. 83653, 2004-Ohio-5383.

{¶ 4} Moore now brings this mandamus action against Judge Sutula to compel her to re-sentence him pursuant to this court's latest remand. On September 1, 2009, Judge Sutula, through the Cuyahoga County Prosecutor's office, filed a motion for summary judgment. For the following reason, we grant the motion for summary judgment.

{¶ 5} Initially, we find that Moore's complaint for a writ of mandamus is defective since it is improperly captioned. A complaint for a writ of mandamus must be brought in the name of the state, on relation of the person applying. Moore's failure to properly caption the complaint warrants dismissal. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Judge Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

{¶ 6} Nevertheless, attached to the motion for summary judgment is a copy of the journal entry which indicates that on August 26, 2009, Judge Sutula re-sentenced Moore pursuant to this court's remand. Accordingly, we find that Moore's petition for a writ of mandamus is moot. *State ex rel. Grant 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.

{¶ 7} Accordingly, we grant Judge Sutula's motion for summary judgment. Respondent to bear costs. 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).

Writ denied.

MARY J. BOYLE, JUDGE

CHRISTINE T. MCMONAGLE, P.J., and
JAMES J. SWEENEY, J., CONCUR