

[Cite as *State ex rel. Tate v. Calabrese*, 2009-Ohio-5389.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93741**

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**STATE OF OHIO, EX REL.,  
ERIC TATE**

RELATOR

VS.

**JUDGE DEENA CALABRESE**

RESPONDENT

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**JUDGMENT:  
COMPLAINT DISMISSED**

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WRIT OF MANDAMUS  
MOTION NOS. 425704 and 426273  
ORDER NO. 426774

**RELEASE DATE:** October 7, 2009

**FOR RELATOR**

Eric Tate, pro se  
Inmate No. 431-603  
Richland Correctional Inst.  
P.O. Box 8107  
Mansfield, Ohio 44901

**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 CHRISTINE T. MCMONAGLE:

{¶ 1} On August 10, 2009, relator Eric Tate commenced this mandamus action against the respondent, Judge Deena Calabrese, to have this court reverse Judge Calabrese's order denying Tate's motion for resentencing in the underlying matter of *State v. Tate*, Cuyahoga County Court of Common Pleas Case No. CR-403489. On August 27, 2009, the respondent, through the Cuyahoga County Prosecutor, filed a motion to dismiss. Thereafter, on September 15, 2009, Tate filed a motion for summary judgment. For the following reason, we grant the motion to dismiss and deny Tate's motion for summary judgment.

{¶ 2} In their motion to dismiss, Judge Calabrese argues that Tate’s mandamus action is barred by res judicata. We agree. In *State ex rel. Tate v. Callahan*, Cuyahoga App. No. 85615, 2005-Ohio-1202, Tate filed an action in mandamus and prohibition to get Judge Callahan to correct his sentence in the same underlying matter. In *State ex rel. Tate v. Callahan*, supra, Tate argued that Judge Callahan was patently and unambiguously without jurisdiction to impose a sentence which did not include a mandatory fine.

{¶ 3} Similarly, in the matter currently before this court, Tate again argues that his sentence is void because the lower court did not impose a mandatory fine. Accordingly, since Tate raises the same issue in this matter, his complaint is barred by the doctrine of res judicata which is fully applicable to actions in mandamus. *State ex rel. Welsh v. Ohio Med. Bd.* (1964), 176 Ohio St. 136, 198 N.E.2d 74.

{¶ 4} Accordingly, we grant the respondent’s motion to dismiss and deny relator’s motion for summary judgment. Relator 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).

Complaint dismissed.

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CHRISTINE T. MCMONAGLE, PRESIDING JUDGE

MARY J. BOYLE, J., and  
JAMES J. SWEENEY, J., CONCUR