

[Cite as *State ex rel. Pruitt v. Cuyahoga Cty. Common Pleas Court*, 2009-Ohio-6657.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94155

**STATE OF OHIO EX REL.,
MICHAEL JARMAL PRUITT**

RELATOR

VS.

**CUYAHOGA COUNTY COMMON PLEAS
COURT, ET AL.**

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Procedendo
Motion Nos. 428726, 428725, 428314, and 428312
Order No. 429089

RELEASE DATE: December 16, 2009

FOR RELATOR

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ATTORNEYS FOR RESPONDENTS

William D. Mason
Cuyahoga County Prosecutor

By: James E. Moss
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JAMES J. SWEENEY, J.:

{¶ 1} On October 27, 2009, Michael Pruitt filed a writ of procedendo against Judge Michael P. Donnelly and a writ of mandamus against Judge Donnelly as well as the Court of Common Pleas. On November 12, 2009, Judge Donnelly, through the Cuyahoga County Prosecutor's office, filed a motion to dismiss the writ of mandamus and a motion for summary judgment against the writ of procedendo. Thereafter, Pruitt filed a motion requesting that these matters be consolidated which was granted by this court. On November 24, 2009, Pruitt filed a motion to dismiss the writ of procedendo and filed a motion for summary judgment and a motion in reply to respondent's motion for summary

judgment in the mandamus action. For the following reasons, we grant the motions to dismiss and deny the motions for summary judgment.

{¶ 2} Initially, we grant Pruitt’s motion to voluntarily dismiss his writ of procedendo. We further grant Judge Donnelly’s motion to dismiss the Cuyahoga County Court of Common Pleas because it is not a proper respondent. “Absent an express statutory authority, a court can neither sue or be sued in its own right.”

Malone v. Court of Common Pleas of Cuyahoga County, (1976), 45 Ohio St.2d 245, 248, 344 N.E.2d 126, quoting *State ex rel. Cleveland Municipal Court v. Cleveland City Council* (1973), 34 Ohio St.2d 120, 121, 296 N.E.2d 544. Lastly, we also grant the motion to dismiss Pruitt’s action in mandamus.

{¶ 3} In order for this court to issue a writ of mandamus, Pruitt 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 must be 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 which 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.

{¶ 4} 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.

{¶ 5} In this matter Pruitt claims that the trial court’s journal entries of November 24, 2004 and November 29, 2004, failed to comply with Crim.R. 32(C) and do not constitute final appealable orders because post-release control was not part of the sentence. Consequently, “every subsequent action taken in relator’s criminal case and all judgments rendered thereafter are void and of no force and effect.” On April 17, 2009, Pruitt filed a motion in the lower court asking Judge Donnelly to issue a corrected journal entry to fix the alleged error. On November 10, 2009, Judge Donnelly denied the motion to correct the sentencing entries.¹

¹ The writ of procedendo that was voluntarily dismissed asked this court to order Judge Donnelly to rule on the motion to correct the sentencing entries.

{¶ 6} Since Judge Donnelly has denied the motion to correct the above sentencing entries, Pruitt can appeal that ruling to determine whether the Judge Donnelly was correct in denying the motion. Therefore the existence of an adequate remedy at law prohibits this court from granting the writ of mandamus.

{¶ 7} Accordingly, we grant the motions to dismiss and deny the motions for summary judgment. 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.

JAMES J. SWEENEY, JUDGE

KENNETH A. ROCCO, P.J., and
CHRISTINE T. MCMONAGLE, J., CONCUR