

[Cite as *Cotton v. Russo*, 2010-Ohio-16.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94116

MILTON COTTON

RELATOR

VS.

JOHN RUSSO, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus/Procedendo
Motion No. 428070
Order No. 429449

RELEASE DATE: January 6, 2010

FOR RELATOR

Milton Cotton, pro se
Inmate No. A234-317
Grafton Correctional Inst.
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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

CHRISTINE T. MCMONAGLE, J.:

{¶ 1} Milton Cotton has filed a complaint for a writ of mandamus/procedendo, which this court shall treat solely as a complaint for a writ of mandamus. Cotton seeks an order from this court, which requires Judge John Russo to re-issue a sentencing journal entry in *State v. Cotton*, Cuyahoga County Court of Common Pleas Case No. CR-281730, that complies with the mandatory sentencing requirements as established in *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. Judge Russo has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} In order for this court to issue a writ of mandamus, Cotton must establish a clear legal right to a new sentencing journal entry, a clear legal duty on the part of Judge Russo to issue a new sentencing journal entry, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St.3d 262, 2005-Ohio-6432, 838 N.E.2d 658; *State ex rel. Nichols v. Cuyahoga Cty. Bd. of Mental Retardation & Dev. Disabilities* (1995), 72 Ohio St.3d 205, 648 N.E.2d 823. Mandamus is an extraordinary remedy that is to be employed with caution and only when the right is clearly established and 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. Connoles v. Cleveland Bd. of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850; *State ex rel. Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 614 N.E.2d 827.

{¶ 3} In support of his claim for a writ of mandamus, Cotton argues that the original sentence of incarceration, as journalized on August 20, 1992, fails to comport with the sentencing requirements of *State v. Baker*, supra. Cotton argues that the sentencing journal entry was defective since: (1) the journal entry does not contain a finding of guilt with regard to each separate count; (2) the trial court failed to impose minimum and maximum sentences; (3) the trial court failed to aggregate minimum and maximum sentences; and

(4) the trial court failed to run case numbers CR-281730, CR-257742, and CR-259650 consecutive or concurrent to each other.

{¶ 4} The Supreme Court of Ohio, in *State v. Baker*, supra, held that Crim.R. 32(C) requires that a judgment of conviction set forth the following: (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence imposed as to each count; (3) the signature of the presiding judge; and (4) entry on the journal by the clerk of court. In the case sub judice, a review of the trial court’s sentencing journal entry, as attached to Judge’s Russo’s motion for summary judgment, indicates compliance with the sentencing requirements of *Baker*. The sentencing journal entry provides that; (1) the jury returned a verdict of guilty as to each count of the indictment, with the exception of count 14, which was dismissed by the trial court per Crim.R. 29 on August 13, 1992; (2) the trial court imposed a separate sentence of incarceration with regard to each count; (3) the sentencing journal entry contained the trial judge’s signature; and (4) the sentencing journal entry was journalized by the clerk of the trial court on August 20, 1992.

{¶ 5} The remainder of Cotton’s arguments, in support of his claim for a writ of mandamus, are issues that fall within the parameters of an adequate remedy of law. The issues of minimum and maximum sentences of

incarceration, aggregate sentencing, and consecutive versus concurrent sentences of incarceration are potential sentencing errors. Cotton has or had adequate remedies in the ordinary course of law, e.g., appeal or postconviction relief, for review of any alleged sentencing errors. *State ex rel. Hughley v. McMonagle*, 121 Ohio St.3d 536, 2009-Ohio-1703, 905 N.E.2d 1220; *State ex rel. Jaffal v. Calabrese*, 105 Ohio St.3d 440, 2005-Ohio-2591, 828 N.E.2d 107. It must also be noted that Cotton filed a “motion to vacate the void ab initio judgment entry of August 14, 1992, pursuant to Ohio Criminal R. 32(C) in accordance to former Ohio Revised Code 2929.51.” An appeal, from any decision rendered by Judge Russo with regard to Cotton’s pending motion to vacate, also constitutes an adequate remedy at law that prevents this court from issuing a writ of mandamus.

{¶ 6} Accordingly, we grant Judge Russo’s motion for summary judgment. Costs to Cotton. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Writ denied.

CHRISTINE T. MCMONAGLE, JUDGE

SEAN C. GALLAGHER, A.J., and

MARY EILEEN KILBANE, J., CONCUR