

[Cite as *State ex rel. Fortson v. Griffin*, 2010-Ohio-783.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94612

**STATE OF OHIO, EX REL.
RALPH FORTSON**

RELATOR

VS.

BURT W. GRIFFIN, JUDGE

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus

Order No. 430933

RELEASE DATE: March 1, 2010

FOR RELATOR

Ralph Fortson, pro se
Inmate # 454-644
Mansfield Correctional Inst.
P.O. Box 788
Mansfield, Ohio 44901

ATTORNEY FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR. J.:

{¶ 1} Ralph Fortson, the relator, has filed a complaint for a writ of mandamus. Fortson seeks an order from this court, which requires Judge Michael P. Donnelly, the respondent, to re-enter a judgment entry of conviction and sentence in the underlying action of *State v. Fortson*, Cuyahoga County Court of Common Pleas Case No. CR-439997¹. For the following reasons, we sua sponte dismiss Fortson's complaint for a writ of mandamus.

¹Pursuant to Civ.R. 21 and Civ.R. 25(D)(1), Judge Michael P. Donnelly is substituted for Judge Burt W. Griffin.

{¶ 2} Fortson, through his complaint for a writ of mandamus, argues that the sentencing journal entry of November 13, 2003, fails to comport with the requirements of Crim.R. 32(C) and R.C. 2505.02. Specifically, Fortson argues that the failure to include within the sentencing journal entry the means of conviction results in a defective sentencing journal entry that requires resentencing and entry of a new sentencing journal entry.

{¶ 3} Contrary to Fortson's argument, the sentencing journal entry of November 13, 2003, is not defective and fully complies with Crim.R. 32(C) and R.C. 2505.02. The Supreme Court of Ohio, in *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, established that a sentencing journal entry is a final appealable order under R.C. 2505.02 and complies with Crim.R. 32(C) when it sets forth: (1) **the guilty plea**, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of the court.

{¶ 4} In the case sub judice, the sentencing journal entry of November 13, 2003, provides that "[o]n a former day of court defendant plead guilty to aggravated robbery with 3 year firearm specification ORC 2911.01 F-1 (SB2) as amended in count 1 and attempt murder ORC 2903.02 F-2 (SB2) as amended in count 2." The sentencing journal entry fully complies with the

means of conviction requirement as established in *Baker*. Thus, Judge Donnelly possesses no duty to resentence Fortson. It must also be noted that neither mandamus nor procedendo will compel the performance of a duty that has already been performed. *State ex rel. Fontanella v. Kantos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220; *State ex rel. Howard v. Doneghy*, 102 Ohio St.3d 355, 2004-Ohio-3207, 810 N.E.2d 958.

{¶ 5} Accordingly, we sua sponte dismiss Fortson's complaint for a writ of mandamus. Costs to Fortson. 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).

Complaint dismissed.

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, P.J., and
JAMES J. SWEENEY, J., CONCUR