

[Cite as *State ex rel. Talley v. Calabrese*, 2014-Ohio-4098.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101635

**STATE OF OHIO, EX REL.
ANTIONE TALLEY**

RELATOR

vs.

JUDGE DEENA R. CALABRESE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 477283
Order No. 478020

RELEASE DATE: September 18, 2014

FOR RELATOR

Antione Talley
Inmate #A651-941
Lake Erie Correctional Institution
P.O. Box 8000
501 Thompson Road
Conneaut, Ohio 44030

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor

By: James E. Moss
Assistant County Prosecutor
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Cleveland, Ohio 44113

EILEEN T. GALLAGHER, J.:

{¶1} Antione Talley (“Talley”) has petitioned this court for a writ of mandamus. Talley seeks an order from this court that requires Judge Deena R. Calabrese to award him additional jail-time credit in *State v. Talley*, Cuyahoga C.P. No. CR-11-574581. Judge Calabrese has filed a motion for summary judgment, which we grant for the following reasons.

{¶2} Mandamus is precluded if relator has or had an adequate remedy of law even if relator fails to use it. *State ex rel. Nash v. Fuerst*, 8th Dist. Cuyahoga No. 99027, 2013-Ohio-592, ¶ 6, citing *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 676 N.E.2d 108 (1997), and *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.*, 56 Ohio St.3d 33, 564 N.E.2d 86 (1990). “[A] claim for jail-time credit is remediable in the ordinary course of the law by motion and appeal.” *State ex rel. Franks v. Cosgrove, Judge*, 135 Ohio St.3d 249, 2013-Ohio-402, 985 N.E.2d 1264, ¶ 1. The trial court’s calculation of jail-time credit cannot be addressed through an extraordinary writ. *Powell v. Corrigan*, 8th Dist. Cuyahoga No. 98530, 2012-Ohio-5187, ¶ 3, citing *State ex rel. Ponsky v. Koch*, 8th Dist. Cuyahoga No. 92437, 2009-Ohio-339. Any error associated with the calculation of jail-time credit must be addressed through a direct appeal. *Id.*, citing *State ex rel. Flakes v. Russo*, 8th Dist. Cuyahoga No. 94044, 2009-Ohio-6474 (other citations omitted). Mandamus is not appropriate.

{¶3} It further appears that the petition is moot. Attached to respondent's motion for summary judgment are orders dated July 23, 2014, that granted relator 269 days of jail-time credit in CR-13-573768 and granted him 226 days of jail-time credit in CR-13-574581. "Neither procedendo nor mandamus 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, ¶ 6.

{¶4} In addition, Talley's petition is defective for failure to comply with Loc.R. 45(B)(1)(a). The failure to comply with the supporting affidavit provision of Loc.App.R. 45(B)(1)(a) requires dismissal of the action. *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 92826, 2009-Ohio-1612, *aff'd*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402.

{¶5} Accordingly, we grant Judge Calabrese's motion for summary judgment. Respondent to pay costs. Costs waived. This court directs the clerk of courts to serve all parties with notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶6} Writ denied.

EILEEN T. GALLAGHER, JUDGE

MARY J. BOYLE, A.J., and
MELODY J. STEWART, J., CONCUR
KEY WORDS:

#101635 - S/O Ex Rel. Antione Talley v. Judge Deena R. Calabrese

Writ of mandamus; adequate remedy at law; appeal; motion for jail time credit; calculation of jail time credit. Relator is not entitled to a writ of mandamus to compel an order for jail time credit because he has a remedy in the ordinary course of the law by motion and appeal. Additionally, respondent issued orders granting jail time credit rendering the petition for mandamus moot.