

[Cite as *State ex rel. West v. McDonnell*, 2014-Ohio-4391.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101455

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**STATE OF OHIO, EX REL.  
TIMOTHY WEST**

RELATOR

vs.

**HONORABLE NANCY McDONNELL**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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Writ of Mandamus  
Motion No. 477005  
Order No. 478748

**RELEASE DATE:** September 30, 2014

**FOR RELATOR**

Timothy West, pro se  
Inmate No. A604-876  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, Ohio 44901

**ATTORNEYS FOR RESPONDENT**

Timothy J. McGinty  
Cuyahoga County Prosecutor

By: James E. Moss  
Assistant County Prosecutor  
9th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

LARRY A. JONES, SR., P.J.:

{¶1} On May 29, 2014, the relator, Timothy West, commenced this mandamus action against the respondent, Judge Nancy McDonnell, to compel the judge to resentence him in the underlying case, *State v. West*, Cuyahoga C.P. No. CR-11-548609-B, as mandated by this court in *State v. West*, 8th Dist. Cuyahoga Nos. 97391 and 97900, 2013-Ohio-96, that ruled that West's convictions for cultivating/manufacturing marijuana and drug trafficking were allied offenses. West had been convicted of both, and the trial judge had initially sentenced him to consecutive sentences for those offenses. On July 23, 2014, the respondent judge moved for summary judgment on the grounds of mootness. Attached to her dispositive motion was a certified copy of a July 8, 2014 journal entry scheduling the resentencing for July 24, 2014. A review of the underlying case's docket shows that the trial court resentedenced West and merged the two counts, with the state electing to sentence West on the drug trafficking count. West never opposed the judge's motion for summary judgment. This action is moot. West has received his requested relief, a resentencing pursuant to this court's judgment, and the trial court has fulfilled its duty to resentence.

{¶2} Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of mandamus. 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).

{¶3} Writ denied.

LARRY A. JONES, SR., PRESIDING JUDGE

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EILEEN A. GALLAGHER, J., and  
MARY EILEEN KILBANE, J., CONCUR