

[Cite as *State ex rel. Johnson v. Calabrese*, 2015-Ohio-1388.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102607

STATE OF OHIO EX REL., LAPETTO JOHNSON

RELATOR

vs.

JUDGE DEENA R. CALABRESE

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Mandamus
Motion No. 483548
Order No. 484063

RELEASED DATE: April 8, 2015

FOR RELATOR

Lapetto Johnson
Inmate No. 206-629
Mansfield Correctional Institution
P.O. Box 788
Mansfield, Ohio 44901

ATTORNEYS FOR RESPONDENT

Timothy McGinty
Cuyahoga County Prosecutor

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

PATRICIA ANN BLACKMON, J.:

{¶1} Lapetto Johnson has filed a complaint for a writ of mandamus. Johnson seeks an order from this court that requires Judge Deena Calabrese to modify and decrease the sentence of incarceration that was imposed in *State v. Johnson*, Cuyahoga C.P. No. CR-88-230027.¹ Judge Calabrese has filed a motion to dismiss, which we grant for the following reasons.

{¶2} On July 28, 1998, Johnson was indicted by the Cuyahoga County Grand Jury for seven counts of kidnaping, six counts of rape, four counts of abduction of a minor, five counts of felonious assault, two counts of gross sexual imposition, two counts of aggravated robbery, and one count of aggravated rape. On October 3, 1998, Johnson entered a plea of guilty to all counts of the indictment except for Count 3, abduction of a minor. Johnson was sentenced to a term of imprisonment of 96 years of actual incarceration to 235 years. Johnson's plea of guilty and sentence of incarceration were affirmed on appeal. *State v. Johnson*, 8th Dist.Cuyahoga No. 56808, 1990 Ohio App. LEXIS 1310 (Mar. 29, 1990). On February 13, 2015, Johnson filed his complaint for a writ of mandamus as premised upon the alleged breach of the agreement that formed the basis of his plea as entered on October 3, 1998.

{¶3} In order for this court to issue a writ of mandamus, Johnson must

¹Judge Donald C. Nugent originally presided over Johnson's criminal proceeding and imposed sentence following a plea of guilty. Judge Nugent retired from the bench and was

demonstrate a clear legal right to the requested act, a corresponding clear legal duty on the part of Judge Calabrese to perform the requested act, and the absence of a plain and adequate remedy in the ordinary course of the law. *State ex rel. Woods v. Oak Hill Community Med. Ctr., Inc.*, 91 Ohio St.3d 459, 2001-Ohio-96, 756 N.E.2d 1108; *State ex rel. Sekermestrovich v. Akron*, 90 Ohio St.3d 536, 740 N.E.2d 252 (2001). Herein, Johnson possesses or possessed “an adequate remedy to rectify any alleged breach of plea agreement by filing a motion with the sentencing court to either withdraw his previous guilty plea pursuant to Crim.R. 32.1 or specifically enforce the agreement.” *State ex rel. Seikbert v. Wilkinson*, 69 Ohio St.3d 489, 491, 1994-Ohio-39, 633 N.E.2d 1128. *See also State ex rel. Rowe v. McCown*, 108 Ohio St.3d 183, 2006-Ohio-548, 842 N.E.2d 51; *Brown v. Synenberg*, 8th Dist. Cuyahoga No. 93757, 2009-Ohio-5499. Additionally, Johnson has not provided this court with any controlling legal authority demonstrating that he has a clear legal right to the requested relief or that Judge Calabrese has a clear legal duty to provide that relief. Johnson has, therefore, failed to meet the standard for relief in mandamus.

{¶4} Accordingly, we grant Judge Calabrese’s motion to dismiss. Costs to Johnson. The court directs the clerk of courts to serve all parties with notice of this judgment and date of entry upon the journal as required by Civ.R. 58(B).

{¶5} Complaint dismissed.

replaced by Judge Deena Calabrese. *See* Civ.R. 25(D).

PATRICIA ANN BLACKMON, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
SEAN C. GALLAGHER, J., CONCUR