

[Cite as *State ex rel. Thompson v. Saffold*, 2015-Ohio-321.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102061

STATE EX REL. LONNIE THOMPSON

RELATOR

vs.

JUDGE SHIRLEY STRICKLAND SAFFOLD

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 480145
Order No. 481820

RELEASE DATE: January 26, 2015

FOR RELATOR

Lonnie Thompson, pro se
Inmate Number 640-614
Trumbull Correctional Institution
P.O. Box 901
Leavittsburg, Ohio 44430

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor

By: James E. Moss
Assistant County Prosecutor
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MELODY J. STEWART, J.:

{¶1} On October 15, 2014, the relator, Lonnie Thompson, commenced this mandamus action against the respondent, Judge Shirley Strickland Saffold, to compel her to rule on a motion to correct judgment that Thompson filed on March 20, 2014, in the underlying case, *State v. Thompson*, Cuyahoga C.P. No. CR-11-553640-A. On November 12, 2014, the respondent judge moved for summary judgment on the grounds of mootness. Thompson filed a brief in opposition on November 26, 2014. For the following reasons, this court grants the summary judgment motion and denies the application for a writ of mandamus.

{¶2} In the underlying case, a jury found Thompson guilty of multiple counts of forgery, theft, telecommunications fraud, identity theft, and one count of engaging in a pattern of corrupt activity for masterminding a counterfeit check cashing scheme. The March 13, 2013 sentencing entry stated that the total sentence would be 32 years and six months. The sentence imposed for count 30, telecommunications fraud, was a \$250 fine and 12 months consecutive to any other count. The sentence imposed for count 31, identity fraud, was a \$250 fine and 12 months consecutive to other counts.

{¶3} On appeal, *State v. Thompson*, 8th Dist. Cuyahoga No. 99628, 2014-Ohio-202, this court affirmed Thompson's convictions, but reversed and remanded because counts 30 and 31 are allied offenses and should have been merged. In response, the trial judge on November 10, 2014, issued a journal entry ordering Thompson back to court on January 12, 2015, for resentencing for the sole purpose of merging counts 30 and 31.

{¶4} On March 20, 2014, Thompson had filed the subject motion to correct judgment entry. Thompson did not attach a copy of that motion to his mandamus complaint or any of his other filings in the present case. Nor does the filing appear to be available through the

Cuyahoga County Clerk of Court's website. When the trial judge did not resolve the subject motion, Thompson commenced this mandamus action.

{¶5} The trial judge issued two orders in response to Thompson's motion to correct judgment entry. The first stated that the court granted Thompson's motion to correct judgment in part; it would issue a nunc pro tunc entry that correctly reflects the sentence imposed at the March 4, 2013 sentencing. In that nunc pro tunc order the court reiterated the March 4, 2013 order but stated that Thompson's sentence would be a total of 31 years and 6 months. The court then clarified that the 12 months sentence for count 30 would be concurrent to count 31 but consecutive to any other count. The \$250 fine for count 30 remained, and the sentence for count 31 remained the same.

{¶6} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Furthermore, mandamus is not a substitute for appeal. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); and *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerneinghan v. Gaughan*, 8th Dist. Cuyahoga No. 67787, 1994 Ohio App. LEXIS 6227 (Sept. 26, 1994). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It

should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977).

{¶7} Additionally,

the issuance of a writ of mandamus rests, to a considerable extent at least, within the sound discretion of the court to which application for the writ is made. The writ is not demandable as a matter of right, or at least is not wholly a matter of right; nor will it issue unless the relator has a clear right to the relief sought, and makes a clear case for the issuance of the writ. The facts submitted and the proof produced must be plain, clear and convincing before a court is justified in using the strong arm of the law by way of granting the writ.

State ex rel. Pressley, 11 Ohio St.2d at 161.

{¶8} The entry granting in part the motion to correct and then issuing a nunc pro tunc entry that reduces Thompson's sentence by one year fulfills the judge's duty to resolve the outstanding motion and renders this mandamus action moot.

{¶9} Thompson argues that the judge's motion for summary judgment should not be granted because the judge did not have the authority to issue the nunc pro tunc entry and because Thompson was not physically present for the resentencing. His absence resulted in a host of rights violations such as the right to counsel, the right to object to the sentence, the right to be informed about the right to appeal, and the right to allocution. However, the remedy for such errors is appeal, not in controlling the discretion of the trial court through mandamus.

{¶10} To the extent that the entry granting the motion to correct judgment in part does not resolve that motion, this court declines to grant the mandamus because Thompson has failed to establish such by clear and convincing evidence.

{¶11} Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of mandamus. Relator to pay costs. This court directs the

clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶12} Writ denied.

MELODY J. STEWART, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
EILEEN A. GALLAGHER, J., CONCUR.