

[Cite as *State ex rel. Tucker v. Matia*, 2015-Ohio-5154.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103333

**STATE OF OHIO, EX REL.
SAMUEL L. TUCKER**

RELATOR

vs.

DAVID MATIA, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 488714
Order No. 490983

RELEASE DATE: December 9, 2015

FOR RELATOR

Samuel L. Tucker, pro se
Inmate No. 431799
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
The Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶1} Relator, Samuel L. Tucker, filed a complaint for writ of mandamus seeking an order to compel respondent Judge David Matia to vacate Tucker's conviction and sentence for attempted murder in *State v. Tucker*, Cuyahoga C.P. No. CR-02-420683-ZA. Respondent moved for summary judgment, which Tucker has opposed. For the reasons that follow, we grant respondent's motion for summary judgment and deny the writ.

{¶2} In order for this court to issue a writ of mandamus, Tucker must demonstrate a clear legal right to the requested act, a corresponding clear legal duty on the part of Judge Matia to perform the requested act, and the absence of a plain and adequate remedy in the ordinary course of the law. *State ex rel. Walker v. State*, 142 Ohio St.3d 365, 2015-Ohio-1481, 30 N.E.2d 947.

{¶3} In CR-02-420683, Tucker was indicted with four counts. According to the docket, he pled guilty to attempted murder as charged in Count 2 and kidnapping as charged in Count 3. The state presented a copy of the indictment, and Count 2 provides in relevant part as follows:

COUNT TWO: ATTEMPTED MURDER R.C. 2923.02/2903.02

The Grand Jurors, on their oaths, further find that Defendant(s) unlawfully did purposely attempt to cause the death of Brenda Williams.

Tucker filed a motion to vacate his attempted murder conviction and sentence with the trial court, arguing that it was void based on *State v. Nolan*, 141 Ohio St.3d 454, 2014-Ohio-4800, 25 N.E.3d 1016. In *Nolan*, the Ohio Supreme Court held that attempted felony murder, pursuant to R.C. 2923.02/2903.02(B) is not a cognizable crime in Ohio. *Id.* at syllabus. Tucker admits that Count 2 of his indictment tracks the language of R.C. 2923.02(A), which provides, "No person shall purposely cause the death of another or the unlawful termination of another's

pregnancy.” Tucker, however, urges us to find that he pled guilty and was sentenced to attempted felony murder pursuant to R.C. 2923.02/2903.02(B) based on the other charges that were contained in the indictment. He provides no authority that would allow us to interpret his guilty plea in that manner. Tucker pled guilty to Count 2 of the indictment as charged, which alleged a violation of R.C. 2903.02(A) by the language it employed. Accordingly, *Nolan* is inapplicable to an attempted murder conviction pursuant to R.C. 2923.02/2903.02(A) and, therefore, Tucker’s conviction for attempted murder is not void pursuant to that authority. Tucker is not entitled to a writ of mandamus.

{¶4} Respondent’s motion for summary judgment is granted. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶5} Writ denied.

SEAN C. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR