

[Cite as *Turner v. McGinty*, 2015-Ohio-529.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102074

JOHN L. TURNER, JR.

RELATOR

vs.

TIMOTHY J. MCGINTY, ET AL.

RESPONDENTS

JUDGMENT:
WRIT GRANTED IN PART AND DENIED IN PART

Writ of Mandamus
Motion No. 480083
Order No. 482207

RELEASE DATE: February 11, 2015

FOR RELATOR

John L. Turner
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ATTORNEYS FOR RESPONDENTS

Timothy J. McGinty
Cuyahoga County Prosecutor
By: James E. Moss
Assistant Prosecuting Attorney
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FRANK D. CELEBREZZE, JR., A.J.:

{¶1} John L. Turner has filed a complaint for a writ of mandamus. Turner seeks an order from this court, which requires Judge John D. Sutula to render rulings with regard to numerous motions to dismiss and motions for self-representation filed in *State v. Turner*, Cuyahoga C.P. No. CR-13-576006. Turner also requests that a writ of mandamus be issued that orders Timothy J. McGinty, Cuyahoga County Prosecutor, to respond to the motions to dismiss and motions for self-representation. For the following reasons, we grant in part and deny in part, Turner's request for a writ of mandamus.

{¶2} In order to be entitled to the requested relief in mandamus, Turner must prove a clear legal right to the requested acts, a corresponding clear legal duty on the part of Judge Sutula and McGinty to perform the requested acts, 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, Turner argues that he possesses a legal right to have rulings issued with regard to the motions to dismiss and motions for self-representation, that Judge Sutula possesses a clear legal duty to render rulings with regard to his pending motions, and that there exists no other adequate remedy in the ordinary course of the law.

{¶3} As to the motions to dismiss for lack of a speedy trial, we find that Turner has failed to establish that he possesses a clear legal right to any rulings or that Judge Sutula possesses a clear legal duty to render any rulings. This determination is premised upon the fact that the pro se motions to dismiss, based on a violation of his right to speedy trial, were filed pro se when represented by counsel. It is well established that a defendant does not possess any

right to “hybrid representation.” *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, paragraph one of the syllabus; *State v. Thompson*, 33 Ohio St.3d 1, 6-7, 514 N.E.2d 407 (1987). The right to counsel and the right to act pro se “are independent of each other and may not be asserted simultaneously.” *Martin*, paragraph one of the syllabus.

{¶4} When a criminal defendant is represented by counsel, a trial court may not entertain a defendant’s pro se motion. *State v. Gibson*, 8th Dist. Cuyahoga No. 100727, 2014-Ohio-3421; *State v. Washington*, 8th Dist. Cuyahoga Nos. 96565 and 96568, 2012-Ohio-1531, ¶ 11 (“Because [defendant] chose to proceed with legal representation, the court could not consider [defendant]’s motion to withdraw his plea, which his appointed counsel did not agree with.”); *State v. Pizzarro*, 8th Dist. Cuyahoga No. 94849, 2011-Ohio-611, ¶ 9 (“Had the trial court entertained defendant’s motion while defendant was simultaneously being represented by appointed counsel, this would have effectively constituted hybrid representation in violation of the established law.”) Thus, Turner has failed to establish that he is entitled to a writ of mandamus to require Judge Sutula to render any rulings with regard to the pro se motions to dismiss.

{¶5} Turner, however, is entitled to a writ of mandamus with regard to his pro se motions for self-representation. A criminal defendant possesses an independent constitutional right of self-representation and may proceed to defend himself when he voluntarily, knowingly and intelligently elects to do so. *State v. Gibson*, 45 Ohio St.2d 366, 345 N.E.2d 399 (1976), citing *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). Once a defendant has clearly and unequivocally informed the trial court that he wishes to represent himself, the trial court possesses a clear legal duty to determine whether the defendant’s waiver of counsel is knowing, intelligent, and voluntary. *State v. Williams*, 8th Dist. Cuyahoga No.

99859, 2014-Ohio-1057. The trial court's failure to inquire into a defendant's demand for self-representation violates the Sixth Amendment right to defend himself and could potentially result in the vacation of the defendant's conviction and a remand for a new trial. *State v. Watson*, 132 Ohio App.3d 57, 724 N.E.2d 469 (8th Dist.1998).

{¶6} Herein, we find that Turner possesses a clear legal right to self-representation. We further find that Turner clearly and unequivocally informed Judge Sutula that he desired to represent himself at trial through three separate motions filed on July 17, 2014, January 8, 2014, and October 7, 2013, thus creating a duty on the part of Judge Sutula to determine whether waiver of counsel and self-representation is knowing, intelligent, and voluntary. Because Turner possesses a clear legal right to self-representation, Judge Sutula possesses a clear legal duty to determine the issue of self-representation, and there exist no other adequate remedy in the ordinary course of the law, we find that Judge Sutula is required to determine whether Turner's request for the waiver of representation by counsel and self-representation is knowing, intelligent, and voluntary. *Cf. State ex rel. Cleveland v. Astrab*, 139 Ohio St.3d 445, 2014-Ohio-2380, 12 N.E.3d 1197; *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452. Judge Sutula is required to rule upon Turner's motions for self-representation.¹

{¶7} Finally, we find that Turner has failed to establish that he is entitled to a writ of mandamus with regard to his claim that McGinty is required to respond to the motions to dismiss and motions for self-representation. Turner has failed to state a claim upon which relief can be

¹Our determination that a writ of mandamus must issue, with regard to the issue of self-representation, does not control the discretion of Judge Sutula to grant Turner's request for self-representation. Mandamus may not be employed to control the discretion of the trial court. Mandamus may only be employed to compel the trial court to exercise discretion. *State ex rel. Benton's Village Sanitation Serv., Inc. v. Usher*, 34 Ohio St.2d 59, 295 N.E.2d 657 (1973); *State ex rel. Scott v. Masterson*, 173 Ohio St. 402, 183 N.E.2d 376 (1962).

granted through his claim McGinty is required to respond to the motions to dismiss and the motions for self-representation. *State ex rel. Peebles v. Anderson*, 73 Ohio St.3d 559, 1995-Ohio-335, 653 N.E.2d 371.

{¶8} We grant in part and deny in part Turner's complaint for a writ of mandamus. Judge Sutula is ordered to immediately render rulings with regard to Turner's motions for self-representation following inquiry into whether the waiver of counsel and request for self-representation is knowing, intelligent, and voluntary. Judge Sutula possesses no duty to render ruling with regard to the motions to dismiss that were filed pro se while Turner was represented by counsel.

{¶9} Accordingly, we grant in part and deny in part Judge Sutula's motion for summary judgment. Costs to both parties. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶10} Writ granted in part and denied in part.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

LARRY A. JONES, SR., J., and
PATRICIA ANN BLACKMON, J., CONCUR