

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102435

STATE EX REL., LARRY STEWART

PETITIONER

vs.

JUDGE MICHAEL J. RUSSO

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 482267
Order No. 482629

RELEASED DATE: February 18, 2015

FOR RELATOR

Larry Stewart
Inmate #342-560
Marion Correctional Institution
P.O. Box 57
Marion, Ohio 43301

ATTORNEY FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
9th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶1} Larry Stewart has filed a complaint for a writ of mandamus. Stewart seeks an order from this court, which requires Judge Michael J. Russo to comply with R.C. 2929.03(F) and issue a sentencing opinion in *State v. Stewart*, Cuyahoga C.P. No. CR-96-340429-A. We decline to issue a writ of mandamus on behalf of Stewart and grant Judge Russo's motion for summary judgment.

{¶2} On June 13, 1997, a jury found Stewart guilty of the offenses of aggravated murder with firearm specifications, attempted murder with firearm specifications, aggravated robbery with firearm specifications, and kidnapping with firearm specifications. The trial court, Judge Daniel O. Corrigan, found Stewart guilty of the offense of having weapons while under disability.¹

{¶3} On September 3, 1997, a mitigation hearing was held. The jury recommended a sentence of life imprisonment without parole eligibility for thirty years. On September 4, 1997, Judge Daniel O. Corrigan sentenced Stewart to consecutive terms of incarceration: three years on all firearm specifications, to be served prior to and consecutive with thirty years to life for the aggravated murder conviction; fifteen-to-twenty-five years for the attempted murder, aggravated robbery, and kidnapping convictions, and three-to-five years for the offense of having weapons while under disability conviction. On January 2, 2015, Stewart filed his complaint for a writ of mandamus based on the claim that he is entitled to a sentencing opinion as required by R.C.

¹Judge Daniel O. Corrigan originally presided over Stewart's trial and imposed sentence. Judge Corrigan retired from the bench and was replaced by Judge Michael J. Russo. *See* Civ.R. 25(D).

2929.03(F).

{¶4} In order to be entitled to the requested relief in mandamus, Stewart must prove a clear legal right to the requested act, a corresponding clear legal duty on the part of Judge Russo 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).

{¶5} Herein, Stewart possesses no right to a sentencing opinion per R.C. 2929.03(F). A sentencing opinion, pursuant to R.C. 2929.03(F), is required only when a sentence of death is imposed upon a defendant and is not applicable when a jury recommends imprisonment for life. *State v. Holmes*, 30 Ohio App.3d 26, 506 N.E.2d 276 (10th Dist.1986); *State v. Morris*, 10th Dist. Franklin No. 13AP-251, 2013-Ohio-5302; *State v. Davis*, 12th Dist. Butler No. CA95-07-124, 1996 Ohio App. LEXIS 4263 (Sept. 30, 1996); *State v. Bradley*, 4th Dist. Scioto No. 1583, 1987 Ohio App. LEXIS 8824 (Sept. 22, 1987). Stewart is not entitled to a written opinion per R.C. 2929.03(F), and has thus failed to establish entitlement to a writ of mandamus.

{¶6} Accordingly, we grant Judge Russo's motion for summary judgment. Costs to Stewart. 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).

{¶7} Writ denied.

PATRICIA ANN BLACKMON, JUDGE

EILEEN A. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR

