

[Cite as *Swanson v. Griffin*, 2016-Ohio-3065.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103605

RICHARD SWANSON

RELATOR

vs.

JUDGE BURT GRIFFIN

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 490067
Order No. 495920

RELEASE DATE: May 18, 2016

FOR RELATOR

Richard Swanson
Inmate No. 573-484
Marion Correctional Institution
P.O. Box 57
Marion, Ohio 43301

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, P.J.:

{¶1} Petitioner Richard Swanson seeks a writ of mandamus to compel respondent to correct alleged plain errors in the sentencing journal entry filed in *State v. Swanson*, Cuyahoga C.P. No. CR-96-339267. Respondent has filed a motion for summary judgment that Swanson has opposed. For the reasons that follow, the motion for summary judgment is granted and the writ is denied.

{¶2} In September 1996, the court sentenced Swanson to a prison term of five to twenty-five years for his aggravated robbery conviction. The court suspended the sentence and ordered Swanson to serve a five-year term of probation to commence after he completed serving prison sentences in Cuyahoga C.P. No. CR-96-335423 for a theft conviction, and Cuyahoga C.P. No. CR-88-230707 for aggravated robbery, felonious assault, and receiving stolen property convictions.

{¶3} The record reflects that Swanson was placed on parole numerous times. He was returned to prison many times for parole violations. The record further shows that Swanson was convicted in multiple criminal cases between 1988 and 2009.

{¶4} He acknowledged in court filings that his five-year probation in CR-96-339267 began in September 1998 when he was placed on parole in CR-88-230707.

{¶5} The trial court held a probation violation hearing in CR-96-339267 on November 25, 1998. The court found Swanson to be in violation of his probation and ordered the original sentence that was imposed on September 20, 1996, to be ordered into

execution and that Swanson be sentenced to five to twenty-five years in prison with 299 days of jail-time credit.

{¶6} In October 2014, Swanson filed an original action in the Marion County Court of Common Pleas based on alleged errors in his sentencing entries and claiming his release dates had been miscalculated in CR-96-339267, CR-88-230707, and CR-96-335423. The trial court dismissed his action finding he had failed to establish that his maximum sentence had expired. The Third District Court of Appeals affirmed on the basis of res judicata, and because the record supported the trial court's conclusion that Swanson failed to demonstrate that his maximum sentence had expired among other procedural grounds that supported dismissal of his habeas corpus petition.

{¶7} Swanson is now petitioning this court for a writ of mandamus to correct alleged errors in the sentencing entry dated September 20, 1996, in CR-96-339267. In his petition, Swanson argues that he has attempted to rectify errors in his sentence and the calculation of his maximum sentence. Swanson refers to three actions he filed in the Marion County Court of Common Pleas but otherwise did not develop his claims in the petition.

{¶8} Respondent moved for summary judgment and Swanson opposed it. Respondent is entitled to summary judgment because Swanson has not established the requirements for mandamus relief.

{¶9} A substantive review of the petition and opposition to summary judgment fails to demonstrate that Swanson is entitled to relief. Mandamus is an extraordinary

remedy “to be issued with great caution and discretion and only when the way is clear.” *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 166, 364 N.E.2d 1 (1977), citing *State ex rel. Kriss v. Richards*, 102 Ohio St. 455, 132 N.E. 23 (1921), and *State ex rel. Skinner Engine Co. v. Kouri*, 136 Ohio St. 343, 25 N.E.2d 940 (1940)._

{¶10} In order for this court to issue a writ of mandamus, Swanson must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental unit to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452. Swanson is required to prove, by clear and convincing evidence, entitlement to the requested writ of mandamus. *State ex rel. Cleveland Right to Life v. State Controlling Bd.*, 138 Ohio St.3d 57, 2013-Ohio-5632, 3 N.E.3d 185, *Richardson v. Byrd*, 8th Dist. Cuyahoga No. 103153, 2015-Ohio-4090, ¶ 3-4.

{¶11} Swanson maintains that he was erroneously placed on probation in 1998 in CR-96-339267 because he had not completed his sentence in CR-88-230707 although he had been placed on parole. Swanson could have raised this issue on direct appeal when the trial court terminated the probation and ordered his original sentence into execution in 1998.

{¶12} Although Swanson maintains he is seeking a writ of mandamus to correct errors in the sentencing entry, he seeks an order requiring respondent to place him on probation and to correct the expiration of his maximum sentence. He has failed to establish that respondent has any duty to calculate the expiration of his maximum term or

that the expiration of his maximum term was miscalculated. *Floyd v. Wilkinson*, 8th Dist. Cuyahoga No. 79959, 2001-Ohio-4159. The Ohio Department of Rehabilitation and Correction, not respondent, has the duty to calculate the minimum and maximum stated prison terms when multiple sentences are imposed. *See Zanders v. Anderson*, 10th Dist. Franklin No. 03AP-888, 2004-Ohio-5160, ¶ 17; *see also* Ohio Adm.Code 5120-2-03. To the extent Swanson is claiming that there are errors in his sentencing entry or alleging that the trial court improperly terminated his probation in CR-96-339267, mandamus does not lie because appeal was an adequate remedy at law to raise these issues. *State ex rel. Fears v. Myers*, 139 Ohio St.3d 273, 2014-Ohio-1939, 11 N.E.3d 274, ¶ 2. The fact that some of these alternate remedies to challenge the alleged sentencing errors may have already been invoked does not entitle Swanson to extraordinary relief in mandamus. *Id.*

{¶13} Respondent's motion for summary judgment is granted and the writ is denied. 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).

{¶14} Writ denied.

MARY EILEEN KILBANE, PRESIDING JUDGE

MARY J. BOYLE, J., and
PATRICIA ANN BLACKMON, J., CONCUR