

[Cite as *State ex rel. Thompson v. Saffold*, 2016-Ohio-3075.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104069

**STATE OF OHIO, EX REL.
LONNIE THOMPSON**

RELATOR

vs.

**JUDGE SHIRLEY STRICKLAND SAFFOLD,
ET AL.**

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 493845
Order No. 495522

RELEASE DATE: May 17, 2016

FOR RELATOR

Lonnie Thompson
Inmate No. 640614
Trumbull Correctional Institution
P.O. Box 901
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ATTORNEYS FOR RESPONDENTS

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KATHLEEN ANN KEOUGH, J.:

{¶1} Lonnie Thompson has filed a complaint for a writ of mandamus. Thompson seeks an order from this court that requires Judge Shirley Strickland Saffold and Christopher LaRose, the warden of the Trumbull Correctional Institution, to convey Thompson to the trial court for the purpose of re-sentencing in *State v. Thompson*, Cuyahoga C.P. No. CR-11-553640. Specifically, Thompson states that he “is therefore entitled to a writ of mandamus requiring [Judge Saffold and LaRose] to convey him to the trial court for the purpose of resentencing pursuant to the ruling of the Eighth District Court of Appeals decision in *State v. Thompson*, [8th Dist. Cuyahoga No. 99628, 2014-Ohio-202].” We decline to issue a writ of mandamus on behalf of Thompson.

{¶2} To be entitled to a writ of mandamus, Thompson must establish a clear legal right to the requested relief, a clear legal duty on the part of Judge Saffold and LaRose to provide it, and 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.

{¶3} In *State v. Thompson*, 8th Dist. Cuyahoga No. 99628, 2014-Ohio-202, this court held that the conviction for telecommunications fraud (Count 30 — R.C. 2913.05(A)) and identity theft (Count 31 — R.C. 2913.49(B)(1)) were allied offenses of similar import and should be merged for sentencing. We held that the appeal be remanded for resentencing at which time the state could choose which of the two offenses the state would pursue for sentencing.

{¶4} A review of the docket in CR-11-553640 demonstrates that on February 16, 2016, Judge Saffold issued a “warrant for removal” that required Thompson be transported to the trial court for resentencing. The docket further demonstrates that on March 29, 2016, Thompson appeared before Judge Saffold, with appointed counsel, and that the following journal entry was journalized:

Defendant in court with counsel.
Prosecutor(s) James Gutierrez and Anna Woods present.
Court reporter present.
Jail time credit to be awarded.
Fines, costs and restitution is suspended.
Sheriff ordered to transport defendant Lonnie B. Thompson, DOB:
3/25/1957, gender: male, race: black.

{¶5} Thompson was transported to the trial court and appeared before Judge Saffold for resentencing. Thus, Thompson’s request for a writ of mandamus is moot. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723; *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983).

{¶6} Moreover, Thompson has or had an adequate remedy in the ordinary course of the law through an appeal. See *State ex rel. Smith v. McGee*, 144 Ohio St.3d 50, 2015-Ohio-2748, 40 N.E.3d 1105 (“Appeal is an adequate remedy precluding writs of procedendo and mandamus”), citing *State ex rel. Ward v. Reed*, 141 Ohio St.3d 50, 2014-Ohio-4512, 21 N.E.3d 303; see also R.C. 2731.05.

{¶7} On November 12, 2014, Judge Saffold resentenced Thompson. An appeal, in *State v. Thompson*, 8th Dist. Cuyahoga No. 102326, was filed by Thompson from the

order of resentencing. Thompson could have addressed the issue of the alleged failure of Judge Saffold, to merge counts 30 and 31 as allied offenses of similar import, in App. No. 102326.

{¶8} In addition, on February 10, 2016, Judge Saffold once again resentenced Thompson through a nunc pro tunc entry. Thompson filed a timely appeal from the resentencing judgment entry of February 10, 2016, in *State v. Thompson*, 8th Dist. Cuyahoga No. 104226, which remains pending. Thompson can raise the issue of the alleged failure of Judge Saffold to merge counts 30 and 31 through the appeal filed in App. No. 104226. An appeal is an adequate remedy at law that prevents the granting of an original action in mandamus. Thompson also possesses the ability to file an appeal from the resentencing held on March 29, 2016. *State ex rel. Elkins v. Fais*, 143 Ohio St.3d 366, 2015-Ohio-2873, 37 N.E.3d 1229; *Ward v. Reed*, 141 Ohio St.3d 50, 2014-Ohio-4512, 21 N.E.3d 303.

{¶9} Accordingly, we grant Judge Saffold's motion for summary judgment and LaRose's motion to dismiss. Costs to Thompson. 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 denied.

KATHLEEN ANN KEOUGH, JUDGE

LARRY A. JONES, SR., A.J., and
MARY J. BOYLE, J., CONCUR