

[Cite as *Winn v. State*, 2016-Ohio-3180.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103743

ANTOINE WINN

RELATOR

vs.

STATE OF OHIO

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Procedendo/Mandamus
Motion No. 491279
Order No. 495525

RELEASE DATE: May 25, 2016

FOR RELATOR

Antoine Winn
Inmate No. 0160044
Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44101

ATTORNEYS FOR RESPONDENT

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

MARY J. BOYLE, J.:

{¶1} Relator, Antoine Winn, filed a petition for writ of procedendo or mandamus seeking an order directing the prosecutor to turn over all discoverable *Brady* material in *State v. Winn*, Cuyahoga C.P. No. CR-15-595909.¹ Respondent Judge Donnelly has filed a motion to dismiss, which relator has not opposed. For the reasons that follow, the motion to dismiss is granted.

{¶2} Relator has alleged that his efforts to obtain discovery in the referenced criminal case were ignored. He does not identify any pending or outstanding motion but demanded production of “all that’s within the state’s custody & control to this case.”

{¶3} Relator attached a copy of the case docket that reflects that the state did produce discovery to the defense. The docket shows a discovery demand on June 1, 2015, with the state’s response the same day. The state filed a supplemental response on June 15, 2015. The court allowed relator to proceed with self-representation on July 22, 2015, which was approved following a stipulation to court psychiatric reports on August 28, 2015. The state filed another supplemental discovery response on August 6, 2015. Relator filed a motion on August 10, 2015, which included claims that he had not received “‘*Brady* materials’ in totality.” He set forth a number of documents he was seeking to be produced to him. Relator filed another request for discovery on August

¹Relator’s petition fails to identify any respondent in the caption, which utilizes the caption from *State v. Winn*, Cuyahoga C.P. No. CR-15-595909(B).

14, 2015. The state filed another supplemental response to request for discovery on August 26, 2015. The state filed another supplemental discovery response on September 4, 2015. On November 13, 2015, relator entered a guilty plea and was sentenced to six months in jail.

{¶4} Respondent has moved to dismiss the petition on procedural grounds as well as for failing to state a claim upon which relief could be granted. Relator did not oppose the motion.

{¶5} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. *State ex rel. Harris v. Rhodes*, 54 Ohio St.2d 41, 374 N.E.2d 641 (1978). Mandamus is not a substitute for appeal. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. If the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108._

{¶6} For a writ of procedendo, relator “must show a clear legal right to require the court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. McCuller v. Cuyahoga Cty. Court of Common Pleas*, 143 Ohio St.3d 130, 2015-Ohio-1563, 34 N.E.3d 905, ¶ 11, citing *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio

St.3d 461, 462, 1995-Ohio-26, 650 N.E.2d 899. “A writ of procedendo is proper when a court has refused to enter judgment or has unnecessarily delayed proceeding to judgment.” *Id.*, citing *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 73 Ohio St.3d 180, 184, 1995-Ohio-98, 652 N.E.2d 742.

{¶7} Relator has failed to allege that respondent has refused to enter judgment or has unnecessarily delayed proceeding to judgment. His claim for writ of procedendo, therefore, fails.

{¶8} Relator has also failed to establish a claim for mandamus relief. Relator pled guilty and was sentenced by the trial court. He is not entitled to the discovery material pursuant to Crim.R. 16 because the rights to discovery end with the criminal trial. *Harrison v. McGinty*, 8th Dist. Cuyahoga No. 103865, 2016-Ohio-946, ¶ 3, citing *State ex rel. Love v. Cuyahoga Cty. Prosecutor’s Office*, 8th Dist. Cuyahoga No. 75740, 1999 Ohio App. LEXIS 1682 (Apr. 15, 1999), *aff’d*, 87 Ohio St.3d 158, 1999-Ohio-314, 718 N.E.2d 426, and *State ex rel. Flagner v. Arko*, 8th Dist. Cuyahoga No. 72779, 1998 Ohio App. LEXIS 380 (Feb. 5, 1998), *aff’d*, 83 Ohio St.3d 176, 1998-Ohio-127, 699 N.E.2d 62. In these cases, the courts ruled that Crim.R. 16’s duties end with trial, despite the relator’s pleas of outstanding exculpatory evidence. *Id.*_

{¶9} Further, the proper remedy to challenge alleged errors in the discovery process is through appeal. *Id.* at ¶ 4, citing *Daggett*, 34 Ohio St.2d at 55, 295 N.E.2d 659.

{¶10} Respondent's motion to dismiss is granted. Relator to pay costs. 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)._

{¶11} Complaint dismissed.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
TIM McCORMACK, J., CONCUR