

[Cite as *State ex rel. Williams v. Astrab*, 2016-Ohio-3182.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103882

**STATE OF OHIO, EX REL.
[RICHARD WILLIAMS]**

RELATOR

vs.

JUDGE MICHAEL K. ASTRAB

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus/Procedendo
Motion No. 492338
Order No. 495524

RELEASE DATE: May 25, 2016

FOR RELATOR

Richard Williams
Inmate No. 592040
Madison Correctional Institution
P.O. Box 740
London, Ohio 43140-0740

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, Richard Williams, filed a petition for writ of mandamus and/or procedendo against respondent Judge Michael K. Astrab to issue a final, appealable order in *State v. Williams*, Cuyahoga C.P. No. CR-10-534090-A. Respondent moved for summary judgment, which relator has not opposed. For the reasons that follow, respondent's motion is granted and the petition is denied.

{¶2} In 2010, relator was charged with multiple felony counts, including kidnapping, felonious assault, gross sexual imposition, and rape. *State v. Williams*, 8th Dist. Cuyahoga No. 95853, 2011-Ohio-2551, ¶ 2 (“*Williams I*”). Relator pled guilty and was sentenced. *Id.* at ¶ 3-13. Relator appealed to this court, and the judgment was affirmed in *Williams I* on May 26, 2011. *Id.* Relator then filed an application to reopen the direct appeal in *Williams I*, which included an argument that the trial court failed to issue a final appealable order. *State v. Williams*, 8th Dist. Cuyahoga No. 95853, 2012-Ohio-352, ¶ 6-7. This court held,

The trial court's August 31, 2010 sentencing entry sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk. *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus. In light of *Lester*, therefore, Williams has not demonstrated that his judgment of conviction is not a final appealable order. As a consequence, Williams's second proposed assignment of error is not well-taken.

Id. at ¶ 7. In *Lester*, the Ohio Supreme Court held “that a nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical

omission in a final judgment entry is not a new final order from which a new appeal may be taken.”” *State ex rel. Newell v. Gaul*, 8th Dist. Cuyahoaga No. 98326, 2012-Ohio-4068, ¶ 15, quoting *Lester*, at ¶ 20.

{¶3} In 2014, Williams filed a motion for a final, appealable order in the trial court again arguing that the 2010 sentencing entry did not comply with Crim.R. 32(C). His attempt to appeal the denial of that motion was unsuccessful in *State v. Williams*, 8th Dist. Cuyahoga No. 101385, 2015-Ohio-767, ¶ 3-6 (“*Williams II*”).

{¶4} Respondent has moved for summary judgment on numerous procedural grounds and alleges that Williams is not entitled to remedy by writ of mandamus or procedendo. Respondent notes that the petition does not contain the addresses required by Civ.R. 10 and the matter is not captioned in the name of the state on relation of Williams as required by R.C. 2731.04. Notwithstanding these procedural defects, respondent is entitled to summary judgment because Williams cannot establish the requisites for mandamus or procedendo relief.

{¶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} Williams’s claims for relief are barred by res judicata. The issue of the finality of the 2010 sentencing entry and the compliance with Crim.R. 32(C) have already been raised by Williams in his application for reopening that was filed and addressed by this court in *Williams I*.

{¶8} Accordingly, respondent’s motion for summary judgment is granted and the petition for writ of mandamus and/or procedendo is denied. 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).

{¶9} Writ denied.

MARY J. BOYLE, JUDGE

TIM McCORMACK, P.J., and
MELODY J. STEWART, J., CONCUR