

[Cite as *State ex rel. Williams v. Sutula*, 2016-Ohio-408.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103565

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STATE OF OHIO, EX REL.  
WILLIS F. WILLIAMS

RELATOR

vs.

JUDGE JOHN D. SUTULA

RESPONDENT

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**JUDGMENT:**  
WRIT DENIED

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Writ of Mandamus  
Motion No. 489838  
Order No. 492595

**RELEASE DATE:** February 3, 2016

**FOR RELATOR**

Willis F. Williams, pro se  
Inmate No. A155-394  
Richland Correctional Institution  
1001 Olivesburg Road  
P.O. Box 8107  
Mansfield, Ohio 44901

**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

FRANK D. CELEBREZZE, JR., P.J.:

{¶1} On September 29, 2015, the relator, Willis Williams, commenced this mandamus action against the respondent, Judge John D. Sutula, to compel the judge to vacate his conviction for attempted murder in the underlying case, *State v. Williams*, Cuyahoga C.P. No. CR-79-47750-B. Williams argues that because he shot a police officer during a robbery, his conviction for attempted murder must be for attempted felony murder pursuant to R.C. 2903.02(B). In *State v. Nolan*, 141 Ohio St.3d 454, 2014-Ohio-4800, 25 N.E.3d 1016, the Supreme Court of Ohio held that attempted felony murder is not a cognizable crime in Ohio. Thus, Williams concludes that because attempted felony murder is not a crime, his conviction for that offense must be void and may be collaterally attacked through the extraordinary writ of mandamus. On October 7, 2015, the respondent, through the Cuyahoga County prosecutor, moved for summary judgment. Williams filed a brief in opposition on October 19, 2015. For the following reasons, this court grants the respondent's dispositive motion and denies the application for a writ of mandamus.

{¶2} A review of the filings in the instant case and this court's opinion in *State v. Williams*, 8th Dist. Cuyahoga No. 41318, 1980 Ohio App. LEXIS 12526 (Sept. 11, 1980), revealed the following: Williams and his female accomplice engaged in robberies to support their drug addictions, and both carried guns. They had decided to rob the Wendy's Restaurant at Buckeye Road and East 120th Street in Cleveland. From their observations of the restaurant, they knew that an off-duty police officer worked as a security guard there. On May 10, 1979, when they entered the Wendy's, Williams went directly to the police officer, pointed his .38 caliber revolver at him and said, "You're mine, pig." The officer struggled with Williams over

the gun, and during the fight, Williams shot the officer three times. Although seriously injured, the officer survived.

{¶3} A jury convicted Williams of attempted murder in violation of R.C. 2903.02 and aggravated robbery in violation of R.C. 2911.01. The trial judge sentenced him to two consecutive terms of seven to twenty-five years.

{¶4} At the time, R.C. 2903.02, Murder, had only one substantive provision; subsection (A) provided as follows: “No persons shall purposely cause the death of another.”<sup>1</sup> The legislature in 1998, added subsection (B), the felony murder provision, as follows: “No person shall cause the death of another as a proximate result of the offender’s committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code.”

{¶5} In *Nolan*, 141 Ohio St.3d 454, 2014-Ohio-4800, 25 N.E.2d 1016, the Supreme Court of Ohio examined the propriety of a charge of attempted felony murder. The attempt statute, R.C. 2923.02, requires the offender to act purposely or knowingly. In contrast, the felony murder statute, R.C. 2903.02(B) “imposes what is in essence strict liability.” *Id.* at ¶ 9. If engaging in violent, illegal activities causes the unintended death of another, the offender may be convicted of murder. The court concluded that the knowingly mens rea of the attempt statute is incompatible with the strict liability of the felony murder charge in R.C. 2903.02(B). It is “impossible to purposely or knowingly cause an unintended death. Accordingly, \* \* \* attempted felony murder is not a cognizable crime in Ohio.” *Id.*

{¶6} Williams seizes upon *Nolan* in an effort to vacate his conviction for attempted murder. He reasons that because he entered the Wendy’s to rob it, the struggle with the police

officer and shooting him three times were the unintended results of the robbery. His “conviction” is thus really a conviction for attempted felony murder. Because that is not a cognizable crime, Williams argues that conviction is void and mandamus will lie to vacate a void judgment. *State ex rel. Ballard v. O’Donnell*, 50 Ohio St.3d 182, 553 N.E.2d 650 (1990).

{¶7} This argument is meritless. First, *Nolan* applied only to R.C. 2903.02(B), the felony murder statute, and that provision did not exist at the time of Williams’s offense. Williams was convicted pursuant to attempted murder, R.C. 2903.02(A). It is impossible for subsection (B) to apply in this case. Second, aiming a revolver at a person, threatening the person, and then shooting that person three times at close range were intentional acts. The jury properly convicted Williams of purposely trying to cause the death of another.

{¶8} Accordingly, this court grants the respondent’s motion for summary judgment and denies the application for a writ of mandamus. 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.

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FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

KATHLEEN ANN KEOUGH, J., and  
MELODY J. STEWART, J., CONCUR

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<sup>1</sup> The other subsection provided the penalty for murder.