

[Cite as *State ex rel. Sevayega v. Gallagher*, 2016-Ohio-5421.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104225

**STATE OF OHIO, EX REL.
REGINALD SEVAYEGA**

RELATOR

vs.

SHANNON GALLAGHER, JUDGE

RESPONDENT

**JUDGMENT:
WRITS DENIED**

Writs of Mandamus and Procedendo
Motion Nos. 495085 and 496466
Order No. 497799

RELEASE DATE: August 17, 2016

FOR RELATOR

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ANITA LASTER MAYS, J.:

{¶1} On March 11, 2016, the relator, Reginald Sevayega, commenced this procedendo and mandamus action against the respondent, Judge Shannon Gallagher, to compel her to rule on his motion to vacate judgment, filed on January 1, 2015, in the underlying case, *State v. Sevayega*, Cuyahoga C.P. No. CR-92-290548-ZA.¹ In the subject motion, Sevayega seeks to vacate the determination that he is a sexual predator. He also asserts that the respondent judge has the duty to vacate the judgment, because the judge who adjudicated him a sexual predator was not the original trial court judge or the successor judge as required by R.C. 2950.09(C)(1)(b) and, thus, did not have jurisdiction to make the adjudication. On April 6, 2016, the respondent judge moved for summary judgment on the ground of mootness. Attached to the dispositive motion was a copy of a certified August 12, 2015 judgment entry stating: “Defendant’s second pro se motion to vacate judgment, filed 1/5/2015 is denied.” Sevayega filed his brief in opposition on April 13, 2016, and his own motion for summary judgment on May 17, 2016. The respondent judge did not file a brief in opposition to Sevayega’s dispositive motion. For the following reasons, this court grants the judge’s summary judgment motion, denies Sevayega’s motion, and denies the application for writs of procedendo and mandamus.

¹In that case in 1993, a jury found Sevayega guilty of rape and two counts of tampering with evidence. In 2003, the trial court found him to be a sexual predator.

{¶2} The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. *Yee v. Erie Cty. Sheriff's Dept.*, 51 Ohio St.3d 43, 553 N.E.2d 1354 (1990). Procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Watkins v. Eighth Dist. Court of Appeals*, 82 Ohio St.3d 532, 1998-Ohio-190, 696 N.E.2d 1079. However, the writ will not issue to control what the judgment should be, nor will it issue for the purpose of controlling or interfering with ordinary court procedure. Thus, procedendo will not lie to control the exercise of judicial discretion. Moreover, it will not issue when there is an adequate remedy at law. *State ex rel. Utley v. Abruzzo*, 17 Ohio St.3d 202, 478 N.E.2d 789 (1985), and *State ex rel. Hansen v. Reed*, 63 Ohio St.3d 597, 589 N.E.2d 1324 (1992).

{¶3} 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. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Furthermore, 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. Thus, mandamus does not lie to correct errors and procedural irregularities in

the course of a case. *State ex rel. Jerningham v. Gaughan*, 8th Dist. Cuyahoga No. 67787, 1994 Ohio App. LEXIS 6227 (Sept. 26, 1994). Furthermore, 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; *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.*, 56 Ohio St.3d 33, 564 N.E.2d 86 (1990). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977); *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 113 N.E.2d 14 (1953); *State ex rel. Connoles v. Cleveland Bd. of Edn.*, 87 Ohio App.3d 43, 621 N.E.2d 850 (8th Dist.1993).

{¶4} To the extent that Sevayega seeks to compel the judge to rule on his motion to vacate, this matter is moot. The August 12, 2015 journal entry establishes that the judge has proceeded to judgment on the motion and that Sevayega has received his requested relief, a ruling on the motion.

{¶5} To the extent that Sevayega seeks to compel the judge to vacate the sexual predator ruling for lack of jurisdiction, his argument is unpersuasive. Judge Terrence O'Donnell initially heard the case. Judge Nancy M. Russo was the successor judge, but she recused herself, and Judge Jose Villanueva was assigned. However, when he recused himself, Administrative Judge Richard McMonagle assumed the case and made the sexual predator determination. Former R.C. 2950.09(C)(1)(b) specified that the

court that sentenced the offender shall also be the court to hold the sexual offender classification hearing. Sevayega then seizes upon language in *State v. Cole*, 8th Dist. Cuyahoga No. 96687, 2011-Ohio-6283, that the judge who conducted the classification hearing lacked jurisdiction to do so because he was not the original judge nor the successor judge. He then concludes that Judge McMonagle did not have jurisdiction to hold the hearing and that his judgment is void, allowing it to be collaterally attacked.

{¶6} However, the extraordinary writs are to compel the exercise of judicial authority, not to dictate what those decisions should be. The determination of whether Judge McMonagle was a successor judge and/or whether *Cole* may allow for successor judges, especially upon recusal, is the exercise of judicial authority that the writs may not control. Moreover, appeal from the sexual offender classification hearing is an adequate remedy at law, precluding both procedendo and mandamus.² Indeed, *Cole* was an appeal from such a hearing. Furthermore, in *State ex rel. Black v. Forchione*, 144 Ohio St.3d 149, 2015-Ohio-4336, 41 N.E.3d 414, ¶ 4, the Supreme Court of Ohio ruled: “[A] claim of improper assignment of a judge can generally be adequately raised by way of appeal.’ *State ex rel. Key v. Spicer*, 91 Ohio St.3d 469, 469, 746 N.E.2d 1119 (2001), citing *Berger v. McMonagle*, 6 Ohio St.3d 28, 30, 451 N.E.2d 225 (1983) (petitions for mandamus and prohibition cannot be used as substitutes for an appeal to contest alleged improper assignment of judge).” In *Forchione*, the Supreme Court of Ohio affirmed the

²The court notes that Sevayega appealed his sexual offender classification. *State v. Sevayega*, 8th Dist. Cuyahoga No. 96687, 2011-Ohio-6283.

denial of a writ of mandamus in which the relator sought to vacate a judgment because the respondent judge was not the originally assigned judge. Therefore, this court declines to issue a special writ that would control judicial authority and for which there are or were adequate remedies at law.

{¶7} Accordingly, this court grants the respondent judge's motion for summary judgment, denies the relator's motion for summary judgment, and denies the application for writs of procedendo and 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).

{¶8} Writs denied.

ANITA LASTER MAYS, JUDGE

LARRY A. JONES, SR., A.J., and
PATRICIA ANN BLACKMON, J., CONCUR