

[Cite as *State ex rel. Moore v. Reinbold*, 2016-Ohio-7787.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104903

STATE OF OHIO, EX REL.
ROBERT MOORE, III

RELATOR

vs.

JUDGE RICHARD D. REINBOLD

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Mandamus
Motion No. 500666
Order No. 501476

RELEASE DATE: November 16, 2016

FOR RELATOR

Robert Moore, III, pro se
Inmate No. 572-298
Grafton Reintegration Center
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Grafton, Ohio 44044

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Brendan R. Doyle
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MELODY J. STEWART, J.:

{¶1} On September 1, 2016, the relator, Robert Moore, III, commenced this mandamus action against the respondent, Judge Richard Reinbold, to compel the judge to resolve the underlying case, *Moore v. Russo*, Cuyahoga C.P. No. CV-16-860606. On October 4, 2016, Judge Reinbold, through the Cuyahoga County prosecutor, filed a motion to dismiss on the grounds that the mandamus action is premature and that mandamus may not be used to control judicial discretion. Moore filed his opposition on October 18, 2016. For the following reasons, this court grants the respondent's motion to dismiss.

{¶2} Moore commenced the underlying case on March 18, 2016, against Judge John J. Russo to obtain injunctive relief and a declaratory judgment that Judge Russo did not honor a plea agreement. Moore alleges that in *State v. Moore*, Cuyahoga C.P. No. CR-09-521078-A ("Case One"), a jury found him guilty of (1) drug possession with a one-year firearm specification, (2) drug trafficking with a one-year firearm specification, (3) carrying a concealed weapon, (4) drug possession with a one-year firearm specification, (5) drug trafficking with a one-year firearm specification, and (6) possession of criminal tools. At the same time in *State v. Moore*, Cuyahoga C.P. No. CR-09-525878-A ("Case Two"), Moore was facing two charges of drug trafficking and one charge of drug possession with one-year firearm specifications. In Case Two, he reached a plea agreement with the state under which he pleaded guilty to one count of

drug trafficking with the firearm specification, the state nolleed the other two charges, and they agreed to a total 13-year sentence.

{¶3} The court imposed sentence in both cases on August 17, 2009. In Case One, the court imposed an aggregate sentence of 13 years and stated that this was an “agreed mandatory sentence” and noted that Moore had waived appellate rights. In Case Two, the court imposed an eight-year sentence on the drug trafficking offense consecutive to one year for the firearm specification, for a total of nine years; this sentence is concurrent to the sentence in Case One. The court also imposed mandatory fines and court costs. Again, the court noted that Moore waived appellate and suppression rights. This court notes that since August 2009, in Case Two, Moore has continually filed motions to withdraw the guilty plea, motions to vacate the plea and sentence, and appeals. He succeeded in vacating the fines and court costs.

{¶4} In the underlying case on March 18, 2016, Moore resorted to the irregular remedy of seeking a declaratory judgment and injunctive relief against the trial court judge to declare that the judge violated the plea agreement in Case Two by imposing a nine-year sentence instead of the agreed 13-year sentence. On May 20, 2016, Judge Russo moved to dismiss, and Moore filed his brief in opposition on June 3, 2016. On July 11, 2016, Judge Reinbold was appointed to hear the underlying case to avoid any potential conflicts. Moore now brings this mandamus action to compel the judge to resolve the underlying case, because as a retired appointed judge, “he has nothing else to do and should have already entered judgment.”

{¶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. 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).

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).

{¶6} Furthermore, the court may exercise discretion in issuing the writ of mandamus. In *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph seven of the syllabus, the Supreme Court of Ohio ruled that “in considering the allowance or denial of the writ of mandamus on the merits, [the court] will exercise sound, legal and judicial discretion based upon all the facts and circumstances in the individual case and the justice to be done.” The court elaborated that in exercising that discretion the court should consider

the exigency which calls for the exercise of such discretion, the nature and extent of the wrong or injury which would follow a refusal of the writ, and other facts which have a bearing on the particular case. * * * Among the facts and circumstances which the court will consider are the applicant’s rights, the interests of third persons, the importance or unimportance of the case, the applicant’s conduct, the equity and justice of the relator’s case, public policy and the public’s interest, whether the performance of the act by the respondent would give the relator any effective relief, and whether such act would be impossible, illegal, or useless.

11 Ohio St.2d at 161-162. *State ex rel. Bennett v. Lime*, 55

Ohio St.2d 62, 378 N.E.2d 152

(1978).

{¶7} The court in the exercise of its discretion declines to issue the writ of mandamus to compel the respondent judge to issue judgment on a declaratory judgment case that has been pending before him for approximately four months. *State ex rel. Richard v. Gorman*, 83 Ohio App.3d 684, 615 N.E.2d 689 (8th Dist.1992).

{¶8} Accordingly, this court grants the respondent's motion to dismiss and dismisses this 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} Complaint dismissed.

MELODY J. STEWART, JUDGE

LARRY A. JONES, SR., A.J., and
MARY EILEEN KILBANE, J., CONCUR