

[Cite as *State ex rel. Daniels v. Russo*, 2016-Ohio-8060.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104502

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**STATE OF OHIO, EX REL.  
DEXTER J. DANIELS**

RELATOR

vs.

**JUDGE JOHN J. RUSSO**

RESPONDENT

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**JUDGMENT:  
WRITS DENIED**

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Writs of Mandamus and Procedendo  
Motion No. 497326  
Order No. 501531

**RELEASE DATE:** December 7, 2016

**FOR RELATOR**

Dexter J. Daniels, pro se  
Inmate No. 213-595  
Lorain Correctional Institution  
2075 South Avon Belden Road  
Grafton, Ohio 44044

**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 EILEEN KILBANE, P.J.:

{¶1} Relator Dexter J. Daniels filed a petition for writs of mandamus and procedendo seeking an order compelling respondent Judge John J. Russo to issue a final, appealable order in *State v. Daniels*, Cuyahoga C.P. No. CR-89-238278. The parties have filed cross-motions for summary judgment. Respondent's motion is granted and relator's motion is denied for the reasons that follow.

{¶2} In 1989, Daniels was charged with multiple counts of aggravated murder with felony murder specifications, aggravated burglary, and aggravated robbery. On August 1, 1989, proceedings were held before a three-judge panel where Daniels pled guilty to aggravated murder and aggravated burglary with felony murder specifications as charged in Counts 1, 3, 5, and 7 of the indictment. Daniels was sentenced to life in prison with thirty full years on Count 1, and life imprisonment with twenty full years before eligibility for parole on Count 5 to be served consecutively to the sentence imposed on Count 1. Daniels was further ordered to serve ten to twenty-five years on Counts 3 and 7, concurrently to each other and to Count 1. The certified copy of sentence provided by respondent as exhibit D, includes both the fact of Daniels's convictions and the sentences that were imposed by the trial court.

{¶3} On March 30, 2016, Daniels filed a motion for a final, appealable order in the underlying case. The trial court denied the motion indicating that Daniels's

conviction became a final order at the time the conviction and sentencing orders were journalized. Daniels did not appeal that ruling.

{¶4} Daniels filed this original action seeking to compel respondent to issue a final, appealable order in compliance with R.C. 2929.03(F), to comply with Crim.R. 43(A) and 44(A), and to advise him of his appellate rights. Respondent argues summary judgment is warranted because R.C. 2929.03(F) does not apply where the state agrees not to pursue the death penalty in exchange for the defendant's guilty plea. Respondent has presented an affidavit of the assistant prosecutor that was assigned to Daniels's case who stated that as part of the plea agreement "the Prosecutor's Office agreed not to pursue the death penalty." Daniels does not dispute this fact but argues that he is still entitled to summary judgment on his complaint because respondent did not address all of his claims.

{¶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} First, Daniels argues that his sentencing entry is not a final, appealable order because it does not contain the fact of his convictions and sentence in a “single document.” However, the record reflects that Daniels entered his plea and was sentenced on the same day and the state’s exhibit D is a certified copy of Daniels’s sentence that includes the fact of the convictions and the sentences that were imposed. Further, the Ohio Supreme Court has held that res judicata bars litigation of this issue where the court issued a final, appealable order pursuant to the law that existed at that time. *State v. Griffin*, 138 Ohio St.3d 108, 2013-Ohio-5481, 4 N.E.3d 989, ¶ 49.

{¶8} In *Griffin*, the defendant was originally sentenced in 1990. In 2009, she filed a motion in the trial court “for a final, appealable order” pursuant to *State v. Baker*, 199 Ohio St.3d 197, 2007-Ohio-3330, 893 N.E.2d 163 and argued that the entry from 1990 violated the “single document” requirement of Crim.R. 32(C) as construed by the

court in *Baker*. *Id.* at ¶ 17. In 2009, the trial court then issued a single document reflecting Griffin's convictions and sentence. The Ohio Supreme Court held that the original sentence in 1990 was a final, appealable order under the law that existed at the time. The court reasoned,

The court of appeals correctly assumed based on the law at the time that the trial court's sentencing entry was a final order. Therefore, the court of appeals had subject-matter jurisdiction to review Griffin's assignments of error. That this law may have changed a decade or more later does not justify our abandoning the law in place and the convictions based on it at the time of trial.

*Griffin* at ¶ 46. Daniels is advancing the same argument that was addressed and rejected by the Ohio Supreme Court in *Griffin*. The sentencing entry from 1989 was a final, appealable order based on the law that existed at that time.

{¶9} Next, Daniels contends that there is no final, appealable order without a sentencing opinion pursuant to R.C. 2929.03(F).

{¶10} Respondent indicates that R.C. 2929.03(F) did not apply to Daniels because the state agreed not to pursue the death penalty in exchange for his guilty plea. *See State v. Griffin*, 138 Ohio St.3d 108, 2013-Ohio-5481, 4 N.E.3d 989 at ¶ 40-46; *State v. Melton*, 8th Dist. Cuyahoga No. 96621, 2011-Ohio-5929 (holding that a sentencing opinion pursuant to R.C. 2929.03(F) is not required where the prosecutor agreed not to pursue the death penalty). Daniels has not presented any contrary authority, nor does he dispute that the state agreed not to pursue the death penalty in exchange for his guilty plea. Accordingly, the trial court was not required to issue a sentencing opinion pursuant to R.C. 2929.03(F).

{¶11} Finally, we note that Daniels maintains he was not advised of his right to appeal. However, this claim is not cognizable in an extraordinary writ action because adequate remedies at law exist by way of delayed appeal or a motion to vacate the judgment to raise this claim. *E.g.*, *State ex rel. Sneed v. Anderson*, 114 Ohio St.3d 11, 2007-Ohio-2454, 866 N.E.2d 1084, ¶ 8, citing *State ex rel. Bennett v. White*, 93 Ohio St.3d 583, 584, 2001-Ohio-1615, 757 N.E.2d 364.

{¶12} For the above reasons, respondent's motion for summary judgment is granted and relator's cross-motion for summary judgment is denied. Costs to relator. Costs waived. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).\_

{¶13} Writs denied.

MARY EILEEN KILBANE, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and  
MARY J. BOYLE, J., CONCUR