

[Cite as *State ex rel. Harrison v. McGinty*, 2016-Ohio-946.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103865

STATE OF OHIO, EX REL.
LORENZO HARRISON

RELATOR

vs.

TIMOTHY MCGINTY

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 492235
Order No. 493475

RELEASE DATE: March 8, 2016

FOR RELATOR

Lorenzo W. Harrison, pro se
Inmate No. A563687
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ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Nora E. Graham
Assistant County Prosecutor
The Justice Center - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, P.J.:

{¶1} On December 4, 2015, the relator, Lorenzo Harrison, commenced this mandamus action to compel the respondent, Cuyahoga County Prosecutor Timothy McGinty, to comply with Crim.R. 16(B) and provide him with all discoverable evidence in the underlying case, *State v. Harrison*, Cuyahoga C.P. No. CR-08-513945-A.¹ In this matter, Harrison disavows that he is proceeding under R.C. 149.43, the Ohio Public Records Act. On January 4, 2016, McGinty moved for summary judgment on the grounds of lack of duty and adequate remedy at law. Harrison filed a response on February 2, 2016. He argued that the mandamus should issue because the prosecutor failed to obtain and disclose exculpatory evidence, specifically, records from a Michigan social worker. For the following reasons, this court grants the motion for summary judgment and denies the application for a writ of mandamus.

{¶2} 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*

¹In the underlying case in 2009, a jury found Harrison guilty of three counts of rape of a child under ten years old and the corresponding kidnapping counts. The trial court sentenced him to three concurrent terms of life imprisonment without parole. On appeal, this court reversed in part and remanded for the limited purpose of inquiring into Harrison's request for new counsel, with instructions to re-enter the convictions if the trial court concluded that Harrison's allegations that he should have had new counsel were unfounded. *State v. Harrison*, 8th Dist. Cuyahoga No. 93132, 2010-Ohio-2778, *reopening disallowed*, 2011-Ohio-699. On remand, the trial court found Harrison's allegations unpersuasive and re-entered the convictions. On appeal, this court affirmed. *State v.*

ex rel. Harris v. Rhodes, 54 Ohio St.2d 41, 374 N.E.2d 641 (1978). 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. 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.

{¶3} In the present case, Harrison is not entitled to the discovery material pursuant to Crim.R. 16 because his criminal trial concluded approximately five years ago.

The rights to discovery end with the criminal trial. *State ex rel. Love v. Cuyahoga Cty. Prosecutor's Office*, 8th Dist. Cuyahoga No. 75740, 1999 Ohio App. LEXIS 1682 (Apr. 15, 1999), *aff'd*, 87 Ohio St.3d 158, 1999-Ohio-314, 718 N.E.2d 426, and *State ex rel. Flagner v. Arko*, 8th Dist. Cuyahoga No. 72779, 1998 Ohio App. LEXIS 380 (Feb. 5, 1998), *aff'd*, 83 Ohio St.3d 176, 699 N.E.2d 62 (1998). In both of these cases, the courts ruled that Crim.R. 16's duties end with trial, despite the relator's pleas of outstanding exculpatory evidence.

{¶4} Moreover, to the extent that Harrison thought there were errors in the discovery process, the proper remedy for such matters is appeal. *Daggett* at 55.

{¶5} Accordingly, this court grants the prosecutor'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).

{¶6} Writ denied.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

MELODY J. STEWART, J., and
PATRICIA ANN BLACKMON, J., CONCUR