

[Cite as *State ex rel. Graham v. Gallagher*, 2017-Ohio-1566.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105348

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STATE OF OHIO, EX REL.  
TITUS GRAHAM

RELATOR

vs.

THE HONORABLE JUDGE  
HOLLIE L. GALLAGHER

RESPONDENT

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**JUDGMENT:**  
WRIT DENIED

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Writ of Mandamus  
Motion No. 504187  
Order No. 505479

**RELEASE DATE:** April 25, 2017

**FOR RELATOR**

Titus Graham, pro se  
Inmate No. A591-891  
Trumbull Correctional Institution  
P.O. Box 901  
Leavittsburg, Ohio 44430

**ATTORNEYS FOR RESPONDENT**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
By: James E. Moss  
Assistant County Prosecutor  
The Justice Center, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

TIM McCORMACK, J.:

{¶1} On January 6, 2017, the relator, Titus Graham, commenced this mandamus action against the respondent, Judge Hollie Gallagher, to compel the judge to issue a final, appealable order in the underlying case, *State v. Graham*, Cuyahoga C.P. No. CR-10-537929-A. The gravamen of Graham's complaint is that because the judge did not impose postrelease control sanctions on each of the counts to which he pled guilty, there is no final, appealable order. On February 2, 2017, the respondent judge, through the Cuyahoga County prosecutor, moved for summary judgment on the grounds that the sentencing order is a final, appealable order and that appeal is an adequate remedy at law precluding mandamus. Graham filed his brief in opposition on February 22, 2017. For the following reasons, this court grants the judge's motion for summary judgment and denies the application for a writ of mandamus.

{¶2} In the underlying case on August 17, 2010, Graham pleaded guilty to three counts of kidnapping and one count each of aggravated robbery and aggravated burglary, all with three-year firearm specifications. In the plea entry, the judge advised Graham of five years of mandatory postrelease control, including that if postrelease control is imposed following his release from prison and if he violates postrelease control under R.C. 2967.131(B), the parole board may impose a prison term as part of the sentence of up to one-half of the stated prison term originally imposed on him.

{¶3} In the September 8, 2010 sentencing entry, the judge recounted the guilty plea for each of the five counts. She then sentenced him to a total of 15 years as follows: three years on all of the firearm specifications, four years on each count with the three kidnapping counts running consecutive to each other, and the robbery and burglary counts concurrent to each other and the kidnapping counts. Again, the judge included that postrelease control is part of the prison sentence for five years mandatory, and if postrelease control is imposed following his release from prison and if he violates postrelease control under R.C. 2967.131(B), the parole board may impose a prison term as part of the sentence of up to one-half of the stated prison term originally imposed on him.

{¶4} Graham did not file a timely appeal. Instead, in March 2015, he filed a motion for delayed appeal in *State v. Graham*, 8th Dist. Cuyahoga No. 102670. This court denied the motion on March 12, 2015. On October 31, 2016, he moved the trial court for a final, appealable order, and the trial judge denied the motion on November 8, 2016. Graham now proceeds with this mandamus action to compel the judge to issue a final, appealable order because the judge did not explicitly impose postrelease control on each count.

{¶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 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. 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).

{¶6} Pursuant to *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, and *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, the sentencing entry is a final, appealable order. It set forth the fact of conviction by recounting that Graham pleaded guilty to the five counts; it imposed a sentence for each of the counts, and it has the judge's signature and file-stamp of the clerk. Only one term of postrelease control needs to and should be imposed. *Durain v. Sheldon*, 122 Ohio St.3d 582, 2009-Ohio-4082, 913 N.E.2d 442, and *State v. Morris*, 8th Dist. Cuyahoga No. 97215, 2012-Ohio-2498. Any errors in the imposition of postrelease control are to be addressed through appeal, an adequate remedy at law that precludes an extraordinary writ. *Patterson v. Ohio Adult Parole Auth.*, 120 Ohio St.3d 311, 2008-Ohio-6147, 898 N.E.2d 950, and *State ex rel. Pruitt v. Cuyahoga Cty. Court of Common Pleas*, 125 Ohio St.3d 402, 2010-Ohio-1808, 928 N.E.2d 722.

{¶7} Accordingly, this court grants the judge'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).

{¶8} Writ denied.

TIM McCORMACK, JUDGE

KATHLEEN ANN KEOUGH, A.J., and  
MARY EILEEN KILBANE, J., CONCUR