

[Cite as *State ex rel. Cowan v. Gallagher*, 2017-Ohio-471.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104972

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STATE OF OHIO, EX REL.,  
CRAIG A. COWAN

RELATOR

vs.

JUDGE SHANNON M. GALLAGHER

RESPONDENT

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**JUDGMENT:**  
**WRIT DENIED**

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Writ of Mandamus  
Motion No. 501065  
Order No. 503229

**RELEASE DATE:** February 8, 2017

**FOR RELATOR**

Craig A. Cowan, pro se  
Inmate No. 622034  
Grafton Correctional Institution  
2500 South Avon-Belden Road  
Grafton, Ohio 44044

**ATTORNEYS FOR RESPONDENT**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
By: James E. Moss  
Assistant County Prosecutor  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

LARRY A. JONES, SR., P.J.:

{¶1} Craig Cowan has filed a complaint for a writ of mandamus. Cowan seeks an order from this court that requires Judge Shannon M. Gallagher to discharge several alleged legal duties in sentencing him in *State v. Cowan*, Cuyahoga C.P. No. CR-11-550536. We begin by noting that Cowan has filed at least six appeals and four original actions in this court related to the underlying criminal case.<sup>1</sup> In this mandamus action, Cowan requests this court to order respondent to “perform their [sic] legal duty according to the United States Constitution and Ohio’s Constitution.” Respondent has moved for summary judgment, which we grant for the reasons that follow.

{¶2} “To be entitled to extraordinary relief in mandamus, Cowan must establish a clear legal right to the requested relief, a clear legal duty on the part of the court of appeals to provide it, and the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Cowan*, 2016-Ohio-7430, ¶ 7, citing *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6.

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<sup>1</sup>*State v. Cowan*, 8th Dist. Cuyahoga No. 97877, 2013-Ohio-1172, *application to reopen denied*, 2013-Ohio-1172; *State v. Cowan*, 8th Dist. Cuyahoga No. 99566, 2013-Ohio-4475; *State v. Cowan*, 8th Dist. Cuyahoga No. 100741, 2014-Ohio-3593, *application to reopen denied*, 2015-Ohio-672, *second application for reopening denied*, 2015-Ohio-4271; *State v. Cowan*, 8th Dist. Cuyahoga No. 101995, 2015-Ohio-2271; *State v. Cowan*, 8th Dist. Cuyahoga No. 109938; *State v. Cowan*, 8th Dist. Cuyahoga No. 102938; *State ex rel. Cowan v. Gallagher*, 8th Dist. Cuyahoga No. 103470, 2015-Ohio-5156, *aff’d State ex rel. Cowan v. Gallagher*, 147 Ohio St.3d 416, 2016-Ohio-7430; *State v. Cowan*, 8th Dist. Cuyahoga No. 103855, 2016-Ohio-8045; *State ex rel. Cowan v. Gallagher*, 8th Dist. Cuyahoga No. 104666.

{¶3} Cowan’s main contentions in this mandamus action are that this court erred by allegedly considering a dismissed count of felonious assault (Count 3) when resolving his allied offense argument on appeal. Secondly, Cowan argues that it is the trial court, not the appellate court, who should make the initial determination regarding allied offenses. However, there are other adequate remedies in the ordinary course of the law to address these contentions.

{¶4} This court has repeatedly addressed and rejected Cowan’s contentions that he was sentenced for allied offenses of similar import in violation of his constitutional rights. *E.g.*, *Cowan*, 2015-Ohio-672, ¶ 5 (“The issue of merger was previously addressed through a direct appeal wherein we held that ‘there was a separate animus for each offense; therefore, the offenses do not merge.’ *State v. Cowan*, 8th Dist. Cuyahoga No. 97877, 2012-Ohio-5723, ¶ 37.”). The doctrine of res judicata bars these claims and mandamus does not lie where relator has or had an adequate remedy in the ordinary course of law. Cowan has also raised, or has had the opportunity to raise, any alleged sentencing errors through his numerous appeals, which this court has addressed, including his arguments regarding errors in imposing postrelease control and consecutive sentences.

“Because he had an opportunity to appeal [these] issue[s], Cowan had an adequate remedy in the ordinary course of the law. In general, an available appeal is a remedy sufficient to preclude a writ of mandamus.” *State ex rel. Cowan*, 2016-Ohio-7430, ¶ 9, citing *State ex rel. Caskey v. Gano*, 135 Ohio St.3d 175, 2013-Ohio-71, 985 N.E.2d 453, ¶ 2.

{¶5} Moreover, this court recognized that Cowan was convicted on only one count of felonious assault. *Cowan*, 2012-Ohio-5723, at ¶ 32. This court’s conclusion that his convictions were not allied offenses of similar import had nothing to do with the felonious assault offenses charged in Counts 1 and 3 for which he was not convicted. *Id.* at ¶ 38. This court detailed its rationale for concluding that each count of conviction involved a separate animus and therefore were not allied offenses of similar import. A conviction on Count 3, the felonious assault charge involving Artemus, was not required to sustain a separate conviction on Count 9 for discharge of a firearm at or near a prohibited premises. Each charge required proof of different elements such that a conviction on Count 9 could be sustained without a conviction on Count 3. Because Count 3 was dismissed prior to trial, the trial court was not required to include it as part of the sentencing journal entry. *State ex rel. Snead v. Ferenc*, 138 Ohio St.3d 136, 2014-Ohio-43, 4 N.E.3d 1013, ¶ 13. (“Nothing in Crim.R. 32(C) or this [Ohio Supreme] court’s jurisprudence requires a trial court to include as part of its sentencing entry the disposition of charges that were previously dismissed by the prosecution.”)

{¶6} Respondent’s motion for summary judgment is granted. Relator to pay costs. The court directs the clerk of court to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶7} Writ denied.

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LARRY A. JONES, SR., PRESIDING JUDGE

TIM McCORMACK, J., and  
MELODY J. STEWART, J., CONCUR