

ORIGINAL

THE SUPREME COURT OF OHIO

17-1062

Ohio ex rel Sylvester J. Hunter
North Central Correctional Complex
P.O. Box 1812
Marion, Ohio 43302-1812
Relator PRO Se

ON APPEAL FROM THE ERIE
COUNTY COURT OF APPEALS
SIXTH APPELLATE DISTRICT

Court of Appeals NO.E-17-030
Trial Court No.2004-CR-061

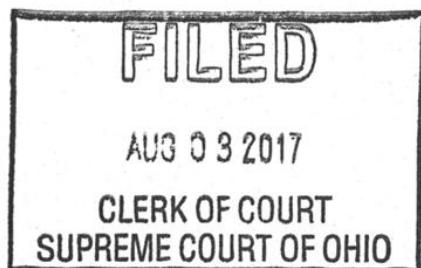
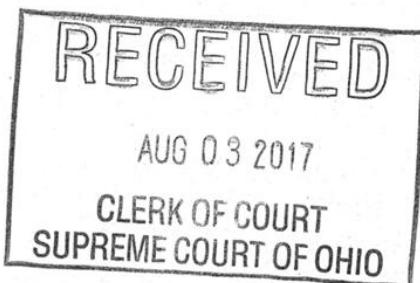
-VS-

Judge Roger E. Binette
Erie County Common Pleas Court's
323 Columbus Avenue 2nd Floor
Sandusky, Ohio 44870
Respondent

NOTICE OF APPEAL, FOR SIXTH APPELLATE DISTRICT SUA SPONTE, DISMISSING
RELATOR COMPLAINT FOR EXTRAORDINARY WRIT OF MANDAMUS

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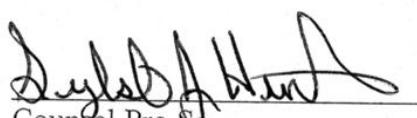


NOTICE OF APPEAL OF RELATOR, APPELLANT
SYLVESTER J. HUNTER

Relator/Appellant Sylvester J. Hunter hereby gives notice of appeal of right S.ct Prac. R.5.01(A) (3), Art IV sec (B) (1), (B)(E) of the Ohio Constitution, to The Supreme Court of Ohio from the judgment of the Erie County Court of Appeal, Sixth Appellate District, entered in Court of Appeal case No. E-17-030 on June 30, 2017.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully Submitted

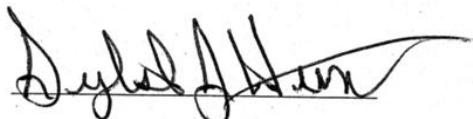


Counsel Pro Se
Sylvester J. Hunter

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for Respondent, Appellee. Mark P. Smith #(0088538) Assistant Prosecutor, Civil Division, Erie County Prosecutor Office 247 Columbus Ave, 3rd Floor, Sandusky, Ohio 44870, on this 31 day of July, 2017

Respectfully Submitted



Sylvester J. Hunter #490-242

FILED
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2017 JUN 30 PM 2:59
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio, ex rel. Sylvester J. Hunter

Court of Appeals No. E-17-030

Relator

v.

Judge Roger E. Binette

DECISION AND JUDGMENT

Respondent

Decided: JUN 30 2017

* * * * *

Sylvester J. Hunter, pro se.

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Mark P. Smith, Assistant Prosecuting Attorney, for respondent.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This matter is before the court on relator's Sylvester Hunter, petition for a writ of mandamus to compel respondent, Hon. Roger E. Binette, to vacate the criminal sentence imposed in case No. 2004 CR 0061, and to resentence him in compliance with R.C. 2951.03 and Crim.R. 32. Because Hunter cannot demonstrate a clear legal right to the requested relief based on the facts alleged, we sua sponte dismiss his petition.

1.

J39-541
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{¶ 2} A writ of mandamus is an extraordinary remedy. Generally, to be entitled to a writ of mandamus, a relator must establish (1) a clear legal right to the relief requested, (2) a clear legal duty to perform the requested act on the part of the respondent, and (3) that the relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Manson v. Morris*, 66 Ohio St.3d 440, 441, 613 N.E.2d 232 (1993). “Sua sponte dismissal without notice is warranted when a complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint.” *State ex rel. Cincinnati Enquirer v. Ronan*, 124 Ohio St.3d 17, 2009-Ohio-5947, 918 N.E.2d 515, ¶ 3.

{¶ 3} On June 30, 2005, Hunter was found guilty by a jury of his peers of one count of rape, a felony of the first degree. A presentence investigation report was ordered and prepared. On July 7, 2005, the trial court sentenced appellant to serve 10 to 25 years in prison. The judgment entry reflecting the sentence was entered on July 8, 2005. On August 2, 2005, Hunter appealed his conviction in case No. E-05-059. On September 29, 2006, we affirmed.

{¶ 4} In his current petition for a writ of mandamus, Hunter raises two arguments. First, he argues that he was sentenced in violation of R.C. 2951.03(B)(1)¹ because his counsel was not permitted to review the presentence investigation report prior

¹ “If a presentence investigation report is prepared pursuant to this section, section 2947.06 of the Revised Code, or Criminal Rule 32.2, the court, at a reasonable time before imposing sentence, shall permit the defendant or the defendant’s counsel to read the report * * *.” R.C. 2951.03(B)(1).

to sentencing. Second, he argues that the trial court violated Crim.R. 32 by entering two separate judgments on the same sentence in two different jurisdictions.

{¶ 5} In support of both arguments, Hunter cites our docket in case No. E-05-059.² Specifically, Hunter references a May 18, 2006 entry in which we ordered that the presentence investigation report shall be certified as part of the record and transmitted by the Erie County Court of Common Pleas. On May 30, 2006, our docket recognizes that the trial exhibits and presentence investigation report were mailed to this court.

{¶ 6} In his first argument, Hunter asserts that the trial court failed to comply with R.C. 2951.03(B)(1) as evidenced by the fact that his appellate attorney filed his appellate brief on January 10, 2006, but the presentence investigation report was not certified as part of the record until May 30, 2006. Hunter confuses certification of the presentence investigation report as part of the record on appeal with the completion and filing of the presentence investigation report in the trial court. Here, the docket in case No. 2004 CR 0061 indicates that the presentence investigation report was completed and filed prior to the sentencing hearing. Therefore, Hunter's first argument is without merit.

² Hunter states that the docket is attached as an exhibit to his petition, but it is not. Nevertheless, we take judicial notice of our own docket in that case.

{¶ 7} In his second argument, Hunter contends that the trial court entered two judgments on the same conviction in contravention of Crim.R. 32(C).³ Hunter references our May 18, 2006 entry in appellate case No. E-05-059, as the second entry. However, our May 18, 2006 entry is not a judgment of conviction. Further, the record indicates that only one judgment of conviction was entered, and it was entered on July 8, 2005, the day after Hunter's sentencing hearing. Therefore, Hunter's second argument is without merit.

{¶ 8} Accordingly, because Hunter obviously is not entitled to a writ of mandamus on the facts alleged in the petition, we hereby dismiss Hunter's petition for a writ of mandamus at Hunter's costs. The clerk is directed to serve upon the parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ denied.

³ "A judgment of conviction shall set forth the fact of conviction and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk." Crim.R. 32(C).

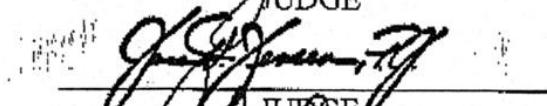
State ex rel. Hunter v. Binette
C.A. No. E-17-030

Mark L. Pietrykowski, J.



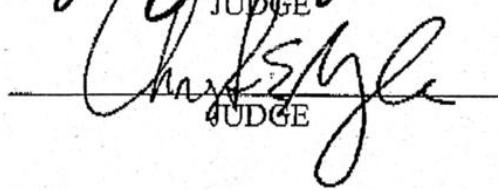
JUDGE

James D. Jensen, P.J.



JUDGE

Christine E. Mayle, J.



JUDGE

CONCUR.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.supremecourt.ohio.gov/ROD/docs/>.