

[Cite as *State ex rel. McKinney v. Defiance Cty. Court of Common Pleas*, 120 Ohio St.3d 277, 2008-Ohio-6107.]

**THE STATE EX REL. MCKINNEY, APPELLANT, v. DEFIANCE COUNTY
COURT OF COMMON PLEAS, APPELLEE.**

**[Cite as *State ex rel. McKinney v. Defiance Cty. Court of Common Pleas*,
120 Ohio St.3d 277, 2008-Ohio-6107.]**

*Civil procedure—Civ.R. 60(B)—Motion for relief from judgment cannot be used
as a substitute for appeal.*

(No. 2008-1404—Submitted November 19, 2008—Decided December 2, 2008.)

APPEAL from the Court of Appeals for Defiance County, No. 4-08-14.

Per Curiam.

{¶ 1} This is an appeal from a judgment denying a motion for relief from a judgment dismissing a petition for a writ of mandamus filed by appellant, Daniel P. McKinney, an inmate at Lebanon Correctional Institution. We affirm the judgment of the court of appeals because McKinney could have raised his claim that the court of appeals erred in dismissing his mandamus petition by filing a timely appeal from that judgment. *Eubank v. Anderson*, 119 Ohio St.3d 349, 2008-Ohio-4477, 894 N.E.2d 48, ¶ 5. “A Civ.R. 60(B) motion for relief from judgment cannot be used as a substitute for a timely appeal * * *.” *Key v. Mitchell* (1998), 81 Ohio St.3d 89, 90-91, 689 N.E.2d 548.

Judgment affirmed.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O’CONNOR,
O’DONNELL, LANZINGER, and CUPP, JJ., concur.

Daniel P. McKinney, pro se.

Jeffrey A. Strausbaugh, Defiance County Prosecuting Attorney, and
Russell R. Herman, Assistant Prosecuting Attorney, for appellee.
