

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO, ex rel.,	:	PER CURIAM OPINION
ANTHONY CIOFFI, JR.,	:	
	:	
Relator,	:	CASE NO. 2011-T-0083
	:	
- vs -	:	
	:	
JUDGE JOHN M. STUARD,	:	
	:	
Respondent.		

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Anthony Cioffi, Jr., pro se, PID# 332-078, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030 (Relator).

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Respondent).

PER CURIAM

{¶1} Before this court is relator, Anthony Cioffi, Jr.’s, Original Action in Mandamus. Respondent, Judge John M. Stuard, has filed a Motion to Dismiss, on the grounds that the petition is moot. For the following reasons, Cioffi’s petition is dismissed, as he cannot prevail on the facts alleged in the complaint.

{¶2} On December 4, 1996, Cioffi pled guilty to Gross Sexual Imposition and Kidnapping, in Trumbull County Court of Common Pleas Case No. 95 CR 696. On the

same date, Cioffi pled guilty to three counts of Rape and three counts of Gross Sexual Imposition, in Trumbull County Court of Common Pleas Case No. 96 CR 599.

{¶3} On December 11, 1996, Cioffi was sentenced to an indeterminate term of imprisonment of ten to twenty-five years for each count of Rape, and a one-year term of imprisonment for each count of Gross Sexual imposition, in Case No. 96 CR 599.

{¶4} On December 19, 1996, Cioffi was sentenced to a one-year term of imprisonment for Gross Sexual imposition, and an indeterminate term of imprisonment of three to fifteen years for Kidnapping, in Case No. 95 CR 696. All sentences in both cases were ordered to be served concurrently.

{¶5} On March 16, 2001, Cioffi filed a Motion to Set Aside Judgment of Conviction and to Withdraw Pleas of Guilty, in both cases.

{¶6} On March 11, 2002, the trial court entered a Judgment Entry, denying Cioffi's Motion. Cioffi filed an appeal from that decision.

{¶7} On May 12, 2003, this court affirmed the trial court's denial of Cioffi's Motion to Set Aside Judgment of Conviction and to Withdraw Pleas of Guilty. See *State v. Cioffi*, 11th Dist. Case Nos. 2002-T-0037 and 2002-T-0039, 2003-Ohio-2374.

{¶8} On June 17, 2009, Cioffi filed an Original Action for Writ of Mandamus against Judge Stuard, Mary Ann Mills (court reporter), and Karen Infante Allen (clerk of court), seeking an order to compel them "to make available and transcribe an accurate copy of a status conference held on 5/31/01."

{¶9} On June 23, 2009, Cioffi filed a second Notice of Appeal from the March 11, 2002 Judgment Entry.

{¶10} On September 18, 2009, this court dismissed the appeal as untimely. *State v. Cioffi*, 11th Dist. Nos. 2009-T-0065 and 2009-T-0066, 2009-Ohio-4932.

{¶11} On March 5, 2010, this court entered judgment in favor of the respondents in Cioffi's Original Action. *State ex rel. Cioffi v. Stuard*, 11th Dist. No. 2009-T-0057, 2010-Ohio-829.

{¶12} On August 26, 2011, Cioffi filed the present Original Action in Mandamus, alleging that Judge Stuard failed "to carry out his legal duty and obligation to Relator by JOURNALIZING the circumstances [o]f a May 31st[,] 2001 evidentiary hearing *** and [o]f November 29th[,] 2001 *** [o]n a MOTION TO SET ASIDE JUDGMENT OF CONVICTION AND WITHDRAW GUILTY PLEA." Cioffi contends that, "until a journal entry is produced, his Motion to Set Aside Judgment Of Conviction and Withdraw Guilty Plea remains undetermined in the trial Court."

{¶13} On the same date, Cioffi filed a Combined Motion to Consolidate Case Nos. for the Original Action in this Writ of Mandamus.

{¶14} On September 6, 2011, Judge Stuard filed a Respondent's Motion to Dismiss. Judge Stuard asserts the issue is moot, in that he has already performed the requested action by journalizing the denial of Cioffi's Motion to Withdraw Guilty Pleas on March 11, 2002.

{¶15} On September 15, 2011, Cioffi filed a Response in Opposition to the Respondent's Motion to Dismiss. Cioffi counters that he is "not attacking the March 11th[,] 2002 judgment entry," but is instead seeking "a judgment entry concerning the circumstances [o]f what actually took place during the May 31st and November 29th[,] hearings conducted before judge John M. Stuard."¹

1. It is not certain evidentiary hearings occurred on May 31 and November 29, 2001, although the trial court's docket indicates that hearings were scheduled to be held on these dates.

{¶16} “Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” R.C. 2731.01.

{¶17} “The writ of mandamus must not be issued when there is plain and adequate remedy in the ordinary course of the law.” R.C. 2731.05. “A cause of action in mandamus, filed originally *** in the court of appeals, will not lie where it is determined that the relator has a plain and adequate remedy in the ordinary course of the law by way of appeal.” *State ex rel. Bd. of Edn. of the Middletown City School Dist. v. Butler Cty. Budget Comm.* (1987), 31 Ohio St.3d 251, syllabus; *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28, 30 (“it is axiomatic that a *** discretionary right of appeal *** [constitutes] a sufficiently plain and adequate remedy in the ordinary course of the law”) (citation omitted).

{¶18} Dismissal of an original action is “appropriate if after presuming the truth of all material factual allegations of [relators’] petition and making all reasonable inferences in their favor, it appear[s] beyond doubt that they could prove no set of facts entitling them to the requested extraordinary relief ***.” *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, at ¶14 (citation omitted). “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.” *Id.* (citation omitted); *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 316 (citations omitted).

{¶19} Cioffi seeks to have this court order Judge Stuard to journalize an account “detailing the facts [of] what actually took place,” at two alleged evidentiary hearings held on his Motion to Set Aside Judgment of Conviction and to Withdraw Pleas of

Guilty, filed pursuant to Crim.R. 32.1. Cioffi has failed to demonstrate that Judge Stuard has an obligation to perform this act.

{¶20} It is well-settled that “Crim.R. 32.1 does not require a court to issue findings of fact and conclusions of law when ruling on a motion to withdraw a guilty plea.” *State ex rel. Chavis v. Griffin*, 91 Ohio St.3d 50, 51, 2001-Ohio-241, and the cases cited therein; accord *State v. Combs*, 11th Dist. No. 2007-P-0075, 2008-Ohio-4158, at ¶47. Since Judge Stuard was not required to issue findings of fact or conclusions of law in ruling on Cioffi’s Motion to Withdraw Pleas of Guilty, mandamus will not lie to compel him to do so.

{¶21} We note that Criminal Rule 12(F) provides that, “[w]here factual issues are involved in determining a motion, the court shall state its essential findings on the record.” Claims made under Criminal Rule 12(F), however, “are regularly addressed on [direct] appeal.” *State ex rel. Ross v. Ohio*, 102 Ohio St.3d 73, 2004-Ohio-1827, at ¶5. Since Cioffi had an adequate remedy in the ordinary course of law, he may not obtain the relief requested through mandamus.

{¶22} For the foregoing reasons, Cioffi’s Original Action in Mandamus is dismissed, sua sponte, on the grounds that he can prove no set of facts entitling him to the requested relief. Cioffi’s Motion to Consolidate Case Nos. and Judge Stuard’s Motion to Dismiss are overruled as moot.

DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J.,
concur.