

[Cite as *State ex rel. Walker v. DeWeese*, 2012-Ohio-1601.]

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO ex rel., GARY D.  
WALKER

Relator

-vs-

JAMES DEWEESE, JUDGE

Respondent

JUDGES:

Hon. Patricia A. Delaney, P. J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 12 CA 10

OPINION

CHARACTER OF PROCEEDING:

Petition for Writ of Procedendo

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

April 6, 2012

APPEARANCES:

For Relator

For Respondent

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RICHLAND CORR. INSTITUTION  
1001 Olivesburg Road  
Mansfield, Ohio 44901

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Wise, J.

{¶1} Relator, Gary Walker, has filed a Complaint for Writ of Procedendo. Respondent, Judge DeWeese, has filed a Motion to Dismiss.

{¶2} Relator maintains the trial court has failed to issue a final, appealable order and is requesting this Court order Respondent to issue such an order. Specifically, Relator argues the trial court's order is not final because it failed to address each forfeiture specification contained in the indictment.

{¶3} The Supreme Court recently addressed a very similar issue where a Relator sought a writ of procedendo on the allegation that the trial court failed to address each firearm specification. In affirming the denial of the writ, the Supreme Court held,

The . . . sentencing entry constituted a final, appealable order because it set forth the fact of [the] convictions, the sentence, the judge's signature, and the time stamp indicating the entry upon the journal by the clerk. *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus; see also *State ex rel. Lockhart v. Whitney*, 130 Ohio St.3d 95, 2011-Ohio-4896, 955 N.E.2d 994, ¶ 2; *State v. Ford*, 128 Ohio St.3d 398, 2011-Ohio-765, 945 N.E.2d 498, ¶ 17 (“firearm specification is merely a sentence enhancement, not a separate criminal offense”). “[N]either mandamus nor procedendo will compel the performance of a duty that has already been performed.” *State ex rel. Tenace v. Court of Claims of Ohio* (2002), 94 Ohio St.3d 319, 321, 762 N.E.2d 1009. And insofar as [Petitioner] contests the failure of the trial

court to issue multiple sentences for his firearm-specification convictions, he has or had an adequate remedy by way of appeal to raise his claim of sentencing error. See, e.g., *State ex rel. Cunningham v. Lindeman*, 126 Ohio St.3d 481, 2010-Ohio-4388, 935 N.E.2d 393, ¶ 1.

*State ex rel. Jones v. Ansted*, 131 Ohio St.3d 125, 125-126, 961 N.E.2d 192, 192 - 193 (Ohio,2012).

{¶4} We have reviewed the trial court’s sentencing entry and find that it does comply with Crim.R. 32 because it sets forth the fact of Relator's convictions, the sentence, the judge's signature, and the time stamp indicating the entry upon the journal by the clerk. *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus. Further, we find Relator has or had an adequate remedy at law to challenging any sentencing error relative to the specifications. *State ex rel. Jones v. Ansted*, 131 Ohio St.3d 125, 125-126, 961 N.E.2d 192, 192 - 193 (Ohio,2012).

{¶5} For these reasons, Respondent’s Motion to Dismiss is granted, and the Complaint for Writ of Procedendo is dismissed.

By: Wise, J.

Delaney, P. J., and

Edwards, J., concur.

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JUDGES

