

[Cite as *State ex rel. McCoy v. Heath*, 2014-Ohio-4716.]

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.,  
MATTHEW WILLIAM MCCOY

Relator

-vs-

JUDGE TARYN L. HEATH

Respondent

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 2014CA00061

OPINION

CHARACTER OF PROCEEDING:

Writ of Mandamus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

October 20, 2014

APPEARANCES:

For Realtor

MATTHEW WILLIAM MCCOY  
640-419  
P.O. Box 8107  
Mansfield, Ohio 44901

For Respondent

JOHN D. FERRERO, JR.  
Stark County Prosecuting Attorney

RONALD MARK CALDWELL  
Assistant Prosecuting Attorney  
Appellate Section  
Stark County Prosecutor's Office  
110 Central Plaza, South, Suite 510  
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*Hoffman, P.J.*

{¶1} Relator, Matthew William McCoy, has filed a Complaint for Writ of Mandamus requesting Respondent be ordered to rule on a motion filed in the trial court on September 25, 2013. In that motion, Relator sought to have Respondent remove the word “mandatory” from Relator’s sentence.

{¶2} Respondent has filed a motion to dismiss the complaint arguing the complaint is now moot because on April 2, 2014 Respondent issued a Nunc Pro Tunc sentencing entry which eliminates any reference to a mandatory sentence.

{¶3} For a writ of mandamus to issue, the relator must have a clear legal right to the relief prayed for, the respondent must be under a clear legal duty to perform the requested act, and relator must have no plain and adequate remedy in the ordinary course of law. *State, ex rel. Berger, v. McMonagle* (1983), 6 Ohio St.3d 28, 6 OBR 50, 451 N.E.2d 225.

{¶4} However, the Supreme Court has held procedendo and mandamus will not issue where the requested relief has been obtained, “Neither procedendo nor mandamus will compel the performance of a duty that has already been performed.” *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 318, 725 N.E.2d 663, 668.

{¶15} Respondent has in essence now ruled on the September 25, 2013 motion by granting the relief requested by Relator. For this reason, the motion to dismiss is granted, and the instant petition is dismissed as moot.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur