

[Cite as *State ex rel. Ross v. Krichbaum*, 2009-Ohio-5514.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE ex rel.,)	
LAWRENCE E. ROSS,)	
)	CASE NO. 09 MA 142
RELATOR,)	
)	
- VS -)	OPINION
)	AND
JUDGE R. SCOTT KRICHBAUM,)	JUDGMENT ENTRY
COMMON PLEAS COURT JUDGE,)	
)	
RESPONDENT.)	

CHARACTER OF PROCEEDINGS: Petition for Writ of Mandamus.

JUDGMENT: Petition Dismissed.

APPEARANCES:
For Relator: Lawrence Ross, Pro-se
#332-055
Lake Erie Correctional Institution
501 Thompson Road
P.O. Box 8000
Conneaut, OH 44030

For Respondent: Attorney Paul J. Gains
Prosecuting Attorney
Attorney Ralph M. Rivera
Asst. Prosecuting Attorney
21 W. Boardman Street, 6th Floor
Youngstown, OH 44503

JUDGES:
Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: October 8, 2009

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PER CURIAM:

{¶1} On August 21, 2008, Relator, Lawrence E. Ross filed a petition for writ of mandamus with this Court, seeking a writ to compel Respondent, Judge R. Scott Krichbaum to journalize his judgment and provide findings of fact and conclusions of law for the denial of Ross's November 13, 1996 motion to dismiss due to a speedy trial violation. Respondent has filed a motion for judgment on the pleadings. Because Ross's claims are barred by res judicata, and because Ross had an adequate remedy at law, Respondent's motion is granted and Ross's petition is dismissed.

{¶2} On November 21, 1996, Ross was convicted of aggravated murder, aggravated burglary, having weapons while under disability, and accompanying firearm specifications. This court affirmed Ross's conviction and sentence in the case styled *State v. Ross* (Oct. 12, 1999), 7th Dist. Nos. 96 CA 247 and 96 CA 251.

{¶3} On August 15, 2003, Ross filed a petition for a writ of mandamus to compel the trial court to issue findings of fact and conclusions of law for its November 1996 decision denying his motion to dismiss. On September 10, 2003, this court dismissed Ross's petition. *State v. Ross*, 7th Dist. Nos. 96 CA 247, 96 CA 251, 2003-Ohio-4889. Ross appealed to the Ohio Supreme Court, which affirmed the decision of this court. *State ex rel. Ross v. State*, 102 Ohio St.3d 73, 2004-Ohio-1827, 806 N.E.2d 553.

{¶4} On August 28, 2007, Ross filed a petition for writ of procedendo against Respondent, again requesting that Respondent be compelled to issue findings of fact and conclusions of law from his denial of Ross's November 13, 1996 motion to dismiss for speedy trial violation. This court dismissed Ross's petition in the case styled *State ex rel. Ross v. Krichbaum*, 7th Dist. No. 07 MA 151, 2007-Ohio-7198. Subsequently, Ross filed the present petition for writ of mandamus.

{¶5} In order for a court to issue a writ of mandamus, a relator must have a clear legal right to the relief prayed for, the respondent must have a clear legal duty to perform the act requested, and the relator must have no plain and adequate remedy at law. *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 42, 8 O.O.3d 36, 374 N.E.2d 641; R.C. 2731.05.

{¶6} As noted in our judgments on Ross's 2003 and 2007 petitions, Ross had an adequate remedy at law through the appellate process. Although he did not do so, Ross could have raised the issue regarding findings of fact and conclusions of law for his speedy trial rights in his direct appeal. Because Ross could have raised the issue on appeal, an adequate remedy at law existed. *State v. Brown*, 64 Ohio St.3d 476, 481, 1992-Ohio-96, 597 N.E.2d 97. The presence of this remedy precludes extraordinary relief in mandamus. *State ex rel. Gaydosh v. Twinsburg*, 93 Ohio St.3d 576, 578, 2001-Ohio-1613, 757 N.E.2d 357.

{¶7} Moreover, given that the same issues currently raised by Ross were already addressed in previous petitions, his present petition is barred by res judicata. The doctrine of res judicata, as it relates to issue preclusion, serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies. *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395, 1998-Ohio-435, 692 N.E.2d 140. Because the subject within Ross's petition has already been repeatedly addressed by this court and the Ohio Supreme Court, Ross may not relitigate his contentions regarding Respondent's failure to issue findings and facts and conclusions of law for his denial of Ross's November 1996 motion.

{¶8} For the foregoing reasons, Respondent's motion for judgment on the pleadings is granted. Ross's petition for writ of mandamus is dismissed. Costs taxed against Ross. Final Order. Clerk to serve notice upon the parties as provided by the Civil Rules.

Vukovich, P.J., concurs.

Donofrio, J., concurs.

DeGenaro, J., concurs.