

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-001964-MR

JUAN SANDERS-EL

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE W. DOUGLAS KEMPER, JUDGE  
ACTION NO. 02-CR-002491

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, LAMBERT, AND VANMETER, JUDGES.

VANMETER, JUDGE: Juan Sanders-El (Sanders) appeals *pro se* from the Jefferson Circuit Court order denying his petition for a writ of mandamus to compel a public attorney to prosecute Sergeant Clarence Marthet for burglary, perjury, and official misconduct. For the following reasons, we affirm.

In 2002, the Jefferson County Police arrested Sanders outside of his residence after his prior convictions of assault and manslaughter were affirmed on

appeal and his bond was revoked. Under the belief that Sanders was a suspect in a recent, unrelated shooting incident, Sgt. Marthet obtained a warrant to search Sanders' residence for evidence related to the shooting. During this search, the officers discovered sixty-five marijuana plants, grow lights, and money, and then obtained a second warrant to search and seize these items.

In 2006, after denying Sanders' motion to suppress evidence seized from the search, the Jefferson Circuit Court entered a final judgment based on a jury verdict finding Sanders guilty of planting, cultivating, or harvesting with intent to sell or transfer marijuana; illegal use or possession of drug paraphernalia; and persistent felony offender in the second degree. The court sentenced Sanders to ten years' imprisonment. On appeal, a panel of this court affirmed his conviction and sentence.<sup>1</sup>

In 2010, Sanders filed *pro se* a complaint alleging that Sgt. Marthet burglarized his home by entering without a valid warrant, committed perjury to obtain the search warrant, and acted with official misconduct. The Attorney General declined to prosecute. Sanders then filed *pro se* a petition for a writ of mandamus in the Jefferson Circuit Court to order the Commonwealth Attorney or County Attorney to prosecute, which the circuit court denied as procedurally and jurisdictionally deficient. This appeal followed.

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<sup>1</sup> *Sanders v. Commonwealth*, 2008-WL-2219789 (Ky.App., May 30, 2008).

On appeal, Sanders claims that the circuit court erred by denying the petition for a writ of mandamus to compel a public attorney to prosecute his case. We disagree.

This court reviews the denial of a petition for a writ of mandamus for an abuse of discretion. *Owens v. Williams*, 955 S.W.2d 196, 197 (Ky.App. 1997). An abuse of discretion occurs if the court's decision was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Campbell v. Commonwealth*, 316 S.W.3d 315, 318 (Ky.App. 2009) (citation omitted).

Mandamus is an extraordinary remedy which compels the performance of a duty or act where a clear legal right exists or no adequate remedy at law. *Sowers v. Lewis*, 241 S.W.3d 319, 321 (Ky. 2007). Mandamus does not lie to compel discretion in how a duty is carried out. *Kaufman v. Humphrey*, 329 S.W.2d 575, 576 (Ky. 1959) (citations omitted). The decision to initiate a prosecution rests with the prosecutor, in the executive branch of government. *Hoskins v. Maricle*, 150 S.W.3d 1, 12 (Ky. 2004). The "[e]xecutive branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *Id.* (citation omitted). A court does not have the power to tell prosecutors which crimes to prosecute or when to prosecute them. *Id.* at 20. Accordingly, the circuit court in this case did not abuse its discretion by denying the petition for a writ of mandamus to compel the Commonwealth Attorney or the County Attorney to prosecute Sanders' case.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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