

[Cite as *State ex rel. Hammond v. Burnside*, 2010-Ohio-1933.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94579**

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**STATE OF OHIO, EX REL.  
DAMARIO HAMMOND**

PETITIONER

vs.

**JUDGE JANET BURNSIDE**

RESPONDENT

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**JUDGMENT:  
COMPLAINT DENIED**

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Writ of Mandamus  
Motion No. 431851  
Order No. 432313

**RELEASE DATE:** April 19, 2010

**FOR PETITIONER**

Damario Hammond, pro se  
Inmate # 454-626  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, Ohio 44901

**ATTORNEYS FOR RESPONDENT**

William D. Mason  
Cuyahoga County Prosecutor

By: James E. Moss  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

MARY EILEEN KILBANE, J:

{¶ 1} On January 26, 2010, Damario Hammond filed a writ of mandamus against Judge Janet Burnside in which he asked this court to order Judge Burnside to conduct a resentencing hearing. On March 8, 2010, Judge Burnside, through the Cuyahoga County Prosecutor's office, filed a motion for summary judgment. For the following reasons, we grant the motion for summary judgment.

{¶ 2} In order for this court to issue a writ of mandamus, Hammond must establish that he has a clear, legal right to the requested relief; that the respondent has a clear, legal duty to perform the requested relief; and there must be no adequate remedy at law. *State ex rel. Manson v. Morris* (1993), 66 Ohio St.3d 440, 613 N.E.2d 232, citing *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28, 451 N.E.2d 225. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. “The duty to be enforced by a writ of mandamus must be specific, definite, clear and unequivocal.” *State ex rel. Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 205, 614 N.E.2d 827. It should not be issued in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Comm.* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Cannole v. Cleveland Bd. of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850. Moreover, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehause* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914.

{¶ 3} Additionally, if a relator had an adequate remedy at law, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108; *State*

*ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86; *State ex rel. Provolone Pizza , LLC. v. Callahan*, Cuyahoga App. No. 88626, 2006-Ohio-660; *State ex rel. Grahek v. McCafferty*, Cuyahoga App. No. 88614, 2006-Ohio-4741.

{¶ 4} In this matter, Hammond was convicted of involuntary manslaughter and robbery. On May 27, 2009, Judge Burnside issued a journal entry that corrected Hammond's original sentencing journal entry of November 10, 2003 and clarified that he was subject to mandatory five years of postrelease control. On July 1, 2009, Judge Burnside again amended the sentencing journal entry, pursuant to Crim.R. 36, to reflect that Hammond is subject to five years post-release control for involuntary manslaughter and three years postrelease control for robbery. On October 23, 2009, Hammond filed a motion for resentencing which was denied by Judge Burnside on October 30, 2009.

{¶ 5} To the extent that Hammond is asking this court to reverse Judge Burnside's decision denying his motion for resentencing, mandamus does not control judicial discretion. Additionally, since Judge Burnside denied the motion, Hammond had the opportunity to appeal her decision. Consequently, the existence of an adequate remedy at law prohibits this court from granting the writ of mandamus.

{¶ 6} Accordingly, we grant the motion for summary judgment. Costs to relator. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Complaint denied.

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MARY EILEEN KILBANE, JUDGE

KENNETH A. ROCCO, P.J., and  
MELODY J. STEWART, J., CONCUR