

[Cite as *Mays v. McCormick*, 2010-Ohio-2231.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94202

BRIAN MAYS

RELATOR

vs.

JUDGE TIMOTHY McCORMICK

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Prohibition
Motion No. 428630
Order No. 433370

RELEASE DATE: May 17, 2010

FOR RELATOR

Brian Mays, pro se
Inmate No. 441-828
Richland Correctional Inst.
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

LARRY A. JONES, J.:

{¶ 1} Relator, Brian Mays, is the defendant in *State v. Mays*, Cuyahoga Cty. Court of Common Pleas Case No. CR-424093, which has been assigned to respondent judge.¹ In Case No. CR-424093, Mays filed a motion for sentencing in light of *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254 (resentencing to include post-release control) on October 19,

¹ By separate entry, this court granted relator leave to amend the caption of this complaint to substitute “Judge Timothy McCormick” for “Judges of the Cuyahoga County Common Pleas Court.” Cf. *State ex rel. Calloway v. Court of Common Pleas, Cuyahoga Cty.* (Feb. 27, 1997), Cuyahoga App. No. 71699; *Tyus v. Grand Pointe Health Community*, Cuyahoga App. No. 88077, 2006-Ohio-2298.

2009. Mays filed this action as a “complaint for temporary restraining order.” He requests that this court issue “a Temporary Restraining Order, precluding Respondents from exercising [sic] unlawful authority in Petitioner’s pending Motion for Sentencing pursuant to State v. Boswell, 2009-Ohio-1577.”² Complaint (capitalization and underlining in original).

{¶ 2} The nature of the relief requested by Mays is that of an action in prohibition. As a consequence, we will treat this case as an action in prohibition. See, e.g., *Nash v. Donnelly*, Cuyahoga App. No. 90462, 2008-Ohio-442.

{¶ 3} Respondent has filed a motion to dismiss. Relator has not opposed the motion. For the reasons stated below, we grant the motion to dismiss.

{¶ 4} The criteria for the issuance of a writ of prohibition are well-established. “In order to be entitled to a writ of prohibition, [relator] had to establish that (1) the [respondent] is about to exercise judicial or quasi-judicial power, (2) the exercise of such power is unauthorized by law, and (3) denial of the writ will cause injury to [relator] for which no other adequate remedy in the ordinary course of law exists. *State ex rel. White v.*

² In *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, 906 N.E.2d 422, the Supreme Court acknowledged its established case law that a sentence which does not impose a mandatory term of post-release control is void.

Junkin (1997), 80 Ohio St.3d 335, 336, 686 N.E.2d 267, 268.” *State ex rel. Wright v. Ohio Bur. of Motor Vehicles*, 87 Ohio St.3d 184, 185, 1999-Ohio-1041, 718 N.E.2d 908. If, however, the respondent court is patently and unambiguously without jurisdiction, the relator need not demonstrate the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, at ¶15.

{¶ 5} A review of the docket in Case No. CR-424093 reflects that respondent has resentenced Mays and that Mays has an appeal from his resentencing pending in this court as Case No. 94838. As indicated above, Mays has requested that this court prevent respondent from exercising “unlawful authority” regarding his motion for sentencing. “A party challenging the court's jurisdiction has an adequate remedy at law via appeal from the court's holding that it has jurisdiction.” *State ex rel. Spears v. Burnside*, Cuyahoga App. No. 92330, 2009-Ohio-606, at ¶2. Because Mays has an adequate remedy by way of appeal, his complaint in prohibition fails to state a claim on which relief can be granted. Mays has also not demonstrated that respondent's acting on his motion for sentencing is unauthorized by law.

{¶ 6} Accordingly, respondent's motion to dismiss is granted. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Complaint dismissed.

LARRY A. JONES, JUDGE

ANN DYKE, P.J., and
JAMES J. SWEENEY, J., CONCUR