

[Cite as *State ex rel. Arnold v. Gallagher*, 2017-Ohio-4076.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105351

**STATE OF OHIO, EX REL.
MARTICE ARNOLD**

RELATOR

vs.

JUDGE HOLLIE GALLAGHER, ET AL.

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus/Procedendo
Motion No. 505038
Order No. 506747

RELEASE DATE: May 26, 2017

FOR RELATOR

Martice Arnold, pro se
Inmate No. 304-446
North Central Correctional Complex
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Marion, Ohio 43302

ATTORNEYS FOR RESPONDENTS

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶1} Martice Arnold, a.k.a. Lamont Arnold, has filed a complaint for a writ of mandamus/procedendo. Arnold seeks a writ of mandamus in order to compel Judge Hollie Gallagher to conduct a de novo guilty plea hearing and a de novo sentencing hearing in *State v. Arnold*, Cuyahoga C.P. No. CR-94-315763. Arnold also seeks a writ of procedendo in order to compel the Cuyahoga County Clerk of Courts, Nailah Byrd, to immediately journalize any judgments rendered by Judge Gallagher that result from a de novo guilty plea hearing and a de novo resentencing hearing. Judge Gallagher and Byrd have filed a joint motion for summary judgment, which we grant for the following reasons.

FACTS

{¶2} On October 27, 1994, Arnold was indicted by the Cuyahoga County Grand Jury for:

1) Count 1— one count of aggravated murder (R.C. 2903.01(A)) with three mass-murder specifications (R.C. 2929.04(A)), one felony murder specification (R.C. 2929.04(A)), and a three-year firearm specification (R.C. 2941.141);

2) Count 2 — one count of aggravated murder (R.C. 2903.01(B)) with three mass-murder specifications (R.C. 2929.04(A)), one felony-murder specification (R.C. 2929.04(A)), and a three-year firearm specification (R.C. 2941.141);

3) Count 3 — one count of attempted murder (R.C. 2923.02/R.C. 2903.02) with a three-year firearm specification (R.C. 2941.141);

4) Count 4 — one count of attempted murder (R.C. 2923.02/R.C. 2903.02) with a three-year firearm specification (R.C. 2941.141);

5) Count 5 — one count of attempted murder (R.C. 2923.02/R.C. 2903.02) with a three-year firearm specification (R.C. 2941.141);

6) Count 6 — one count of aggravated robbery (R.C. 2911.01) with a three-year firearm specification (R.C. 2941.141);

7) Count 7 — one count of kidnapping (R.C. 2905.01) with a three-year firearm specification (R.C. 2941.141); and

8) Count 8 — one count of kidnapping (R.C. 2905.01) with a three-year firearm specification (R.C. 2941.141).

{¶3} On March 29, 1995, Count 2 was amended by deleting the three mass-murder specifications and the felony murder specification. Arnold entered a plea of guilty to an amended Count 2 and also entered a plea of guilty to Count 3, Count 4, Count 5, and Count 7 with firearm specifications. On April 28, 1995, Arnold was sentenced to an aggregate term of incarceration of 20 years to life plus six years as to the firearm specifications.

{¶4} On January 10, 2017, Arnold filed a complaint for a writ of mandamus/procedendo in an attempt to vacate his guilty plea and sentence and require

Judge Gallagher to conduct a de novo guilty plea hearing and a de novo sentencing hearing.

{¶5} On March 1, 2017, two nunc pro tunc judgment entries were issued by Judge Gallagher and journalized by the Cuyahoga County Clerk of Courts. The nunc pro tunc journal entries of March 1, 2017, amended the original guilty plea journal entry to reflect that Arnold pled guilty to Count 2, and not Count 1, and further clarified the original sentencing journal entry as to the sentence imposed for each count and specification:

1) nunc pro tunc guilty plea as journalized on March 1, 2017 —

The following plea journal entry is issued nunc pro tunc as if and for the journal entry issued by this Court on May16, 1995:

Now comes the prosecuting attorney on behalf of the state of Ohio and the defendant, Lamont Arnold, in open court with his/her counsel present and was fully advised of his/her constitutional rights. Attorneys John Carson/Tom Wagner and Prosecutor Robert Christyson present. On recommendation of Pros Ct 2 amended by deleting capital specifications:1, 2, 3 and 4. Thereupon, said defendant retracts his/her former plea of not guilty heretofore entered, and for plea to said indictment says he/she is guilty of aggravated murder RC 2903.01 w/firearm specification amended Ct2; attempted murder RC 2923.02/2903.02 with firearm specification as charged in Ct 3 (F-1), attempted murder RC 2923.02/2903.02 with firearm specification as charged in Ct 4 (F-1), attempted murder RC 2923.02/2903.02 with firearm specification as charged in Ct 5 (F-1); kidnapping RC 2905.01 with firearm specification as charged Ct 7 (Af-1); which plea/pleas, on the recommendation of the prosecuting attorney is/are accepted by the court. On recommendation of prosecutor Cts 1, 6, and 8 are nolle. It is further ordered that said defendant be referred to the probation department for pre-sentence investigation and report. Defendant remanded. Sentencing set for April 28, 1995 at 10:00 A.M.

2) nunc pro tunc sentencing journal entry journalized on March 1, 2017 —

The following sentencing journal entry is issued nunc pro tunc as if and for the journal entry issued by this court on May 16, 1995:

The defendant herein having, on former day of court entered a plea of guilty to aggravated murder RC 2903.01 w/firearm specification amended Ct 2; attempted murder RC 2923.02/2903.02 with firearm specification as charged in Ct 3 (F-1), attempted murder RC 2923.02/2903.02 with firearm specification as charged in Ct 4 (F-1), attempted murder RC 2923.02/2903.02 with firearm specification as charged in Ct 5 (F-1); kidnapping RC 2905.01 with firearm specification as charged Ct 7 (Af-1), was this day in open Court with his/her counsel present. Attorneys John Carson and Tom Wagner present. Thereupon, the Court inquired of the said defendant if he/she had anything to say why judgment should not be pronounced against him/her; and having nothing but what he/she had already said and showing no good and sufficient cause why judgment should not be pronounced.

It is therefore, ordered and adjudged by the court that said defendant, Lamont Arnold, is sentenced to Lorain Correctional Institution for 3 years for the gun specification in amended Count 2 to be served prior to and consecutive [sic] with sentence of life without the possibility of parole for 20 years on amended Ct 2; 10 to 25 years on Ct 3 and 3 years for the gun specification in Count 3 to be served concurrently to each other and concurrently to all other counts; 10 to 25 years on Ct 4 and 3 years for the gun specification in Count 4 to be served concurrently to each other and concurrently to all other counts; 10 to 25 years on Ct 5 and 3 years for the gun specification in Count 5 to be served concurrently to each other and concurrently to all other counts; and 3 years for the gun specification in Ct 7 to be served prior to and consecutive [sic] with sentence of 10 to 25 years on Ct 7 with the base offense to be served concurrently to all other counts and the gun specification in Count 7 to be served consecutively to the gun spec in amended Ct 2. Aggregate sentence of 20 years to life + 6 years on gun specifications. Credit for 189 days. Pay costs.

LEGAL ANALYSIS

{¶6} Arnold, in order to obtain a writ of mandamus/procedendo, must establish, through clear and convincing evidence, that he possesses a clear legal right to the requested relief, that Judge Gallagher and Byrd possess a clear legal duty to provide the requested relief, and that Arnold lacks an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452.

{¶7} Herein, Arnold argues that he is entitled to an order from this court that requires Judge Gallagher to vacate his plea of guilty and the sentence imposed by the trial court and further order a de novo plea hearing and de novo sentencing hearing. In essence, Arnold asserts various sentencing errors in support of his claims for mandamus and procedendo, that include: 1) guilty plea journal entry was not journalized within 30 days as required by former Ohio Sup.R. 13; 2) sentencing journal entry not journalized within 30 days as required by former Ohio Sup.R. 13; 3) journal entry of guilty plea incorrectly indicated that Arnold pled guilty to amended Count 1 instead of amended Count 2; 4) journal entry of guilty plea did not sufficiently indicate that Arnold waived his federal and state constitutional rights; 5) guilty plea journal entry did not comply with Crim.R. 32(B); 6) sentencing journal entry did not comply with Crim.R. 32(B); 7) trial court failed to issue a separate sentencing opinion as required by R.C. 2945.06; 8) Arnold was convicted without a three-judge panel as required by R.C. 2945.06; 9) trial court's sentence of "life without parole for 20 years" is contrary to law; and 10) trial court erred by imposing five three-year terms of incarceration with regard to the firearm specifications.

{¶8} Sentencing errors are not remediable by an extraordinary writ, because the relator possesses or possessed an adequate remedy at law through a direct appeal. *State ex rel. Ridenour v. O’Connell*, 147 Ohio St.3d 351, 2016-Ohio-7368, 65 N.E.3d 742; *State ex rel. Hudson v. Sutula*, 131 Ohio St.3d 177, 2012-Ohio-554, 962 N.E.2d 798. Herein, Arnold has or had adequate remedies in the ordinary course of the law, e.g., appeal, postconviction relief, and App.R. 26(B) application for reopening, for the review of any alleged sentencing errors. *State ex rel. Hughley v. McMonagle*, 123 Ohio St.3d 91, 2009-Ohio-4088, 914 N.E.2d 371; *State ex rel. Jaffal v. Calabrese*, 105 Ohio St.3d 440, 2005-Ohio-2591, 828 N.E.2d 107.

{¶9} Arnold has filed numerous motions to vacate his guilty plea and sentence in the trial court, and has also filed appeals to this court, based upon the identical arguments as raised in support of his complaint for a writ of mandamus/procedendo:

1) *State v. Arnold*, 8th Dist. Cuyahoga No. 72813, 1998 Ohio App. Lexis 3292 (July 16, 1998) — direct appeal from guilty plea and sentence — guilty plea and sentence affirmed;

2) *State v. Arnold*, 8th Dist. Cuyahoga No. 77941 (Jun. 28, 2000) — direct appeal from trial court’s denial of petition for postconviction relief — dismissed for failure to file the App.R. 9(B) record;

3) *State v. Arnold*, 8th Dist. Cuyahoga No. 83700 (Mar. 31, 2004) — direct appeal from trial court’s denial of motion to withdraw plea of guilty — dismissed for failure to file a brief;

4) *State v. Arnold*, 8th Dist. Cuyahoga No. 100422 (Oct. 3, 2013) — direct appeal from denial of motion to dismiss aggravated murder charge and vacate void guilty plea journal entry — motion for delayed appeal denied;

5) *State v. Arnold*, 8th Dist. Cuyahoga No. 105012 (Oct. 13, 2016) — direct appeal from denial of motion to be resentenced due to void judgments — motion for delayed appeal denied; and

6) *State v. Arnold*, 8th Dist. Cuyahoga No. 105051 (Oct. 11, 2016) — direct appeal from denial of motion to be resentenced due to void judgments — dismissed as a duplicate appeal of 8th Dist. Cuyahoga No. 105012.

{¶10} Arnold possessed an adequate remedy in the ordinary course of the law by way of appeal, regardless of whether he properly employed the available remedy. If an adequate remedy was available, but Arnold failed to take advantage of the remedy or Arnold is time-barred from employing the remedy, mandamus or procedendo will not lie to substitute for the remedy. *State ex rel. Alhamarshah v. Indus. Comm. of Ohio*, 142 Ohio St.3d 524, 2015-Ohio-1357, 33 N.E.3d 43; *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 663 N.E.2d 639 (1996).

{¶11} It must also be noted that Arnold possessed an adequate remedy in the course of the law by appealing the nunc pro tunc journal entries that corrected the journal entries that journalized Arnold's guilty plea and sentence. *State ex rel. Johnson v. Cleveland Hts./Univ. Hts. School Dist. Bd. of Edn.*, 73 Ohio St.3d 189, 652 N.E.2d 750 (1995); *State ex rel. Henderson v. Sweeney*, 8th Dist. Cuyahoga No. 102784,

2015-Ohio-2282; *State ex rel. Frett v. Sutula*, 8th Dist. Cuyahoga No. 101983, 2015-Ohio-21.

{¶12} Accordingly, we grant the joint motion for summary judgment filed on behalf of Judge Gallagher and Byrd. Costs to Arnold. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶13} Writ denied.

SEAN C. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
MELODY J. STEWART, J., CONCUR