

[Cite as *State ex rel. Williams v. Gallagher*, 2017-Ohio-7180.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105835

**STATE OF OHIO, EX REL.
SHAWN WILLIAMS**

RELATOR

vs.

THE HONORABLE EILEEN T. GALLAGHER

RESPONDENT

**JUDGMENT:
WRIT DISMISSED**

Writ of Mandamus
Motion No. 508116
Order No. 509033

RELEASE DATE: August 9, 2017

FOR RELATOR

Shawn L. Williams, pro se
Inmate No. A574537
Warren Correctional Institution
P.O. Box 120
Lebanon, Ohio 45036

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

Michael DeWine
Ohio Attorney General
By: Tiffany L. Carwile
Sarah E. Pierce
Assistant Attorneys General
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215

ARLENE SINGER, J.:

{¶1} Relator, Shawn Williams, an inmate at the Warren Correctional Institution in Lebanon, Warren County, Ohio, has filed an application for a writ of mandamus requesting this court to compel “the Honorable Eileen T. Gallagher (sic), Court of Common Pleas, (hereinafter known as “Respondent”) to issue a ruling in the case sub judice on September 16, 2016.” Specifically, relator seeks “an order to compel Respondent to respond to Relator’s motion for new trial pursuant to newly discovered evidence.”

{¶2} The case from which this application stems began when relator was charged with two counts of armed robbery, with gun and violent offender specifications. *See State v. Williams*, 8th Dist. Cuyahoga Nos. 94321, 94322, and 94323, 2011-Ohio-316, ¶ 2-3. He was convicted and sentenced to 12 years incarceration. *Id.* at ¶ 8.

{¶3} On August 1, 2016, he filed a motion for a new trial based on newly discovered evidence. As of December 1, 2016, the court had not ruled on his motion. Pursuant to Sup.R. 40(A)(3), relator asserted that his motion should have been ruled on within 120 days from the date of its filing. On May 26, 2017, he filed for a writ of mandamus on that basis.

{¶4} On June 20, 2017, Michael C. O’Malley, as prosecuting attorney of Cuyahoga County, Ohio, on behalf of respondent, filed a motion for summary judgment to deny relator’s petition. Additionally, on June 23, 2017, respondent filed a motion to dismiss. Both argued the matter was moot because the trial court had already denied relator’s

motion for a new trial. The June 16, 2017 judgment denying relator's motion for a new trial was attached.

{¶5} R.C. 2731.01 provides, “[m]andamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.”

{¶6} “A writ of mandamus will not issue to compel an act already performed.” *Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 279, 658 N.E.2d 723 (1996). “Stated otherwise, the writ will not lie in order to secure a determination of issues which have become moot[.]” *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983).

{¶7} Here, relator applied for the writ to compel judgment on May 26, 2017, and the court proceeded to judgment on June 16, 2017. Therefore the act relator is now requesting was “already performed,” *Jerningham* at 279, and thus his application is moot.¹

{¶8} Accordingly, we decline to issue the writ and find the petition is not well-taken and is dismissed. Relator is ordered to pay the costs of this action. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal pursuant to Civ.R. 58(B).

{¶9} Writ dismissed.

¹Moreover, respondent is no longer a judge of the Cuyahoga County Court of Common Pleas and lacks authority to enter judgments in that court. Accordingly, this serves as additional grounds to deny relator's writ.

ARLENE SINGER, JUDGE

JAMES D. JENSEN, P.J., and
THOMAS J. OSOWIK, J., CONCUR*

*(Singer, Jensen, and Osowik, Judges of the
Sixth Appellate District, sitting by assignment
in the Eighth Appellate District.)