

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.,	:	JUDGES:
JOHN W. JAMISON	:	
	:	
Relator	:	Hon. W. Scott Gwin, P.J.
-vs-	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
	:	
THE COUNTY OF MUSKINGUM, ET AL.	:	
	:	CASE NO. CT08-0022
Respondents	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Petition for Writ of Mandamus

JUDGMENT: WRIT DENIED

DATE OF JUDGMENT ENTRY: October 17, 2008

APPEARANCES:

For Relator – pro se:

John W. Jamison - #546-794
N.C.I.
15708 McConnelsville Road
Caldwell, OH 43724

For Respondents:

D. MICHAEL HADDOX
Prosecuting Attorney
RON WELCH
Assistant Prosecuting Attorney
27 North Fifth Street
Zanesville, OH 43702

Farmer, J.,

{¶1} On May 5, 2008, Relator John W. Jamison filed a Complaint for a Writ of Mandamus against Respondents Judge Kelly Cottrill and Michael Haddox. Relator is requesting release from prison and requests Respondent Cottrill be ordered to issue a ruling on Relator's Motion for Post-Conviction Relief filed on October 1, 2007, and Relator's Motion for Summary Judgment filed on November 26, 2007. Respondents have filed a Motion to Dismiss. Respondent Cottrill issued a ruling on Relator's Motion for Summary Judgment and Motion for Post-Conviction Relief on May 30, 2008.

{¶2} To be entitled to the issuance of a writ of mandamus, the Relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41, 324 N.E.2d 641, citing *State ex rel. National City Bank v. Bd. of Education* (1977) 520 Ohio St.2d 81, 369 N.E.2d 1200.

{¶3} The Supreme Court held in *Madsen*, "Mandamus will not issue to compel an act that has already been performed." *State ex rel. Scruggs v. Sadler*, 102 Ohio St.3d 160, 2004-Ohio-2054, 807 N.E.2d 357, ¶ 5. *State ex rel. Madsen v. Jones* (2005), 106 Ohio St.3d 178, *179, 833 N.E.2d 291, **292.

{¶4} Because the relief sought has already been rendered by the trial court, Relator has no clear right to the relief prayed for, and the Respondent has no clear legal duty to perform an act which it has already performed. *State ex rel. Lewis v. Boggins*,

2007 WL 4395630 (Ohio App. 5 Dist.). Therefore, we find the Petition for Writ of Mandamus must be denied.

{¶5} To the extent Relator's Complaint is requesting immediate release from confinement, the Supreme Court has held, "[H]abeas corpus, rather than mandamus, is the proper action through which to seek release from prison or other physical confinement." *State ex rel. Boraden v. Hendon*, 96 Ohio St.3d 64, 2002-Ohio-3525 at ¶ 7. A writ of mandamus is not a substitute for a writ of habeas corpus. *State ex rel. Jamison*, 2008 WL 1849650, 1 (Ohio App. 5 Dist.). The Complaint filed by Relator fails to set forth the elements necessary to warrant the issuance of the writ of mandamus.

{¶6} WRIT DENIED.

{¶7} COSTS TO RELATOR.

By: Farmer, J.
Gwin, P.J. and
Delaney, J. concur

HON. SHEILA G. FARMER

HON. W. SCOTT GWIN

HON. PATRICIA A. DELANEY

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	:	
THE COUNTY OF MUSKINGUM, ET AL.	:	
	:	
Respondents	:	<u>JUDGMENT ENTRY</u>

For the reasons stated in the Memorandum-Opinion on file, Relator's Writ of Mandamus is hereby denied. Costs taxed to Relator.

HON. SHEILA G. FARMER

HON. W. SCOTT GWIN

HON. PATRICIA A. DELANEY