

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE EX REL. BRADLEY ELLIOTT	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Relator	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2010-CA-00281
HONORABLE JOHN G. HAAS	:	
	:	
Respondent	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Writ of Mandamus

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: March 7, 2011

APPEARANCES:

For: Relator

For: Respondent

BRADLEY ELLIOTT PRO SE
BECI
Box 540
St. Clairsville, OH 43950

KATHLEEN O. TATARSKY
Assistant Prosecuting Attorney
Appellate Section
Stark County Prosecutor's Office
110 Central Plaza South, Ste. 510
Canton, OH 44702-1413

Gwin, P.J.

{¶1} Relator, Bradley Elliott, has filed a Petition for Writ of Mandamus challenging the trial court's imposition of court costs without having considered Relator's ability to pay. Respondent has also filed an Answer as well as a motion to dismiss or motion for summary judgment.

{¶2} For a writ of mandamus to issue, the relator must have a clear legal right to the relief prayed for, the respondent must be under a clear legal duty to perform the requested act, and relator must have no plain and adequate remedy in the ordinary course of law. *State, ex rel. Berger, v. McMonagle* (1983), 6 Ohio St.3d 28, 6 OBR 50, 451 N.E.2d 225.

{¶3} We have previously held, the appropriate forum for challenging court costs is by way of appeal from the sentencing entry; therefore, an adequate remedy at law exists for making such a challenge. See *State of Ohio ex rel. Biros v. Logan*, 2003 WL 22326666, *2 (Ohio App. 11 Dist.) ([T]he propriety of a decision to impose court costs on a convicted defendant can only be contested in a direct appeal from the sentencing judgment.). See *Wuescher v. Whitney* 2008 WL 142575, 1 (Ohio App. 5 Dist.) and *State ex rel. Bachman v. Heath*, 2010 WL 320478, 2 (Ohio App. 5 Dist.).

{¶4} Other courts have similarly held, “[A defendant’s] legal remedy to challenge the court's imposition of court costs [is] by direct appeal of his sentencing entry. *Threatt*, supra. See, also, *State ex rel. Biros v. Logan*, Trumbull App. No.2003-T-0016, at ¶ 10 (finding that res judicata bars relator from collaterally attacking an order imposing court costs in a mandamus action). *State v. Russell*, 2011 WL 334184, 3 (Ohio App. 2 Dist.).

{¶15} Because Relator has or had an adequate remedy at law to challenge the imposition of court costs, a writ of mandamus does not lie. For this reason, we grant Respondent's motion to dismiss.

{¶16} RESPONDENT'S MOTION TO DISMISS GRANTED.

{¶17} PETITION DISMISSED.

{¶18} COSTS TO RELATOR.

{¶19} IT IS SO ORDERED.

By Gwin, P.J.,

Edwards, J., and

Delaney, J., concur

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. PATRICIA A. DELANEY

