

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

STATE EX REL. DAVID A. PEOPLES,

Relator,

v.

MARYELLEN O'SHAUGHNESSY et al.,

Respondents.

---

**OPINION AND JUDGMENT ENTRY**  
**Case No. 19 MA 0072**

---

Petition for Writ of Mandamus

**BEFORE:**

Carol Ann Robb, Cheryl L. Waite, David A. D'Apolito, Judges.

---

**JUDGMENT:**

Dismissed.

---

*David A. Peoples*, Pro se, A576 -128, 2240 Hubbard Road, Youngstown, Ohio 44505,  
for Relator and

*Atty. Ronald O'Brien*, Prosecutor, 373 South High Street, 14<sup>th</sup> Floor, Columbus, Ohio,  
43215, *Atty. Bryan Lee*, Assistant Prosecutor, 373 South High Street, 13<sup>th</sup> Floor,  
Columbus, Ohio 43215, *Atty. Timothy J. Bojanowski*, Struck Love Bojanowski & Acedo,  
P.L.C., 3100 West Ray Road, Suite 300, Chandler, Arizona 85226, *Atty. Dave Yost*,  
Ohio Attorney General, *Assistant Attorney General George Horvath*, Criminal Justice

Section / Corrections Unit, 150 East Gay Street, 16<sup>th</sup> Floor, Columbus, Ohio 43215, for Respondents.

**Dated:** August 17, 2020

**PER CURIAM.**

{¶1} Relator David A. Peoples, an inmate proceeding on his own behalf, has filed this original action seeking a writ of mandamus against three respondents; each whom have a statutory and/or contractual responsibility relative to his current state of imprisonment. In 2002, a jury convicted Relator of one count of aggravated murder in violation of R.C. 2903.01, with two firearm specifications under R.C. 2941.145 (specification concerning use of a firearm to facilitate the offense) and R.C. 2941.146 (specification concerning discharge of a firearm from a motor vehicle; also known colloquially as a drive-by specification), and one count of having a weapon while under disability. The trial court sentenced Relator to 25 years to life imprisonment, plus an additional six years for discharging a weapon from a motor vehicle, plus three years for the firearm-under-disability specification, for a total of 34 years. The sentence was ordered to run consecutive to the term Relator was serving in federal prison. The Tenth District Court of Appeals affirmed Relator's conviction and sentence on direct appeal. *State v. Peoples*, 10th Dist. Franklin No. 02AP-945, 2003-Ohio-4680.

{¶2} In 2017, Relator filed a motion to vacate a void sentence in the trial court arguing the mandated sentence for the drive-by specification under R.C. 2941.146 is five years imprisonment, not six years as the trial court had imposed. The trial court denied Relator's motion and he appealed to the Tenth District Court of Appeals. As R.C. 2941.146 clearly states a conviction for a drive-by specification mandates a five-year term of imprisonment, not six as the trial court had imposed, the Tenth District concluded the sentence was void and the state conceded a limited remand was appropriate but not a de novo resentencing. *State v. Peoples*, 10th Dist. Franklin No. 18AP-850, 2019-Ohio-2141.

{¶3} The first respondent Relator names in his mandamus complaint is Respondent Maryellen O'Shaughnessy, Franklin County Clerk of Courts. Relator asks

this Court to compel Respondent O'Shaughnessy to send a certified copy of the Tenth District Court of Appeals' decision in *State v. Peoples*, 10th Dist. Franklin No. 18AP-850, 2019-Ohio-2141, to the remaining two respondents.

{¶4} The second respondent is Respondent Christopher LaRose, warden of a private prison owned and operated by CoreCivic, located at 2240 Hubbard Road in Youngstown, Mahoning County, Ohio. Core Civic contracts with the United States Immigration and Customs Enforcement (ICE) to house immigrant detainees, the United States Marshals Service to house captured fugitives, and the Northeast Ohio Correctional Center (NEOCC). The NEOCC is one of the Ohio Department of Rehabilitation and Correction's (ODRC) prison institutions. The ODRC is responsible for all adult criminal defendants convicted of felonies for which the statutory minimum is at least six months. Relator is a prison inmate of the NEOCC division of CoreCivic's facility.

{¶5} The third respondent is Respondent Annette Chambers-Smith, Director of the ODRC. Relator asks this Court to compel Respondent LaRose and Respondent Chambers-Smith to return him to the Franklin County jail and into the custody of the Franklin County Sheriff in accordance with the aforementioned Tenth District Court of Appeal's decision.

{¶6} Each Respondent has filed their own motion to dismiss pursuant to Civ.R. 12(B)(6). While there is some minor differentiation among the arguments underlying each motion; they all agree and argue the Relator's complaint should be dismissed as moot.

{¶7} A writ of mandamus is an extraordinary remedy which should be exercised by this Court with caution and issued only when the right is clear. *State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 142 Ohio St.3d 370, 2014-Ohio-4022, 31 N.E.3d 596, ¶ 11. Entitlement to a writ of mandamus requires the relator to demonstrate: (1) they have a clear legal right to the relief, (2) the respondent has a clear legal duty to provide that relief, and (3) relator has no adequate remedy at law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12.

*R.C. 2953.13 – Clerk of Courts' Duty*

{¶8} Relator argues Respondent O'Shaughnessy failed to send a certified copy of the Tenth District Court of Appeal's decision in *State v. Peoples*, 10th Dist. Franklin No.

18AP-850, 2019-Ohio-2141, to Respondent LaRose. Relator bases his entire complaint for a writ of mandamus on his misinterpretation of the the Tenth District’s decision and the extent of what duties to which he is entitled to under R.C. 2953.13, captioned “Certification when judgment reversed or case remanded.” When a criminal defendant’s conviction and sentence is reversed and remanded, R.C. 2953.13 sets forth particular duties and obligations pertaining to two specific government officials—the clerk of courts and the warden of the state correctional institution where the defendant is imprisoned. Relevant to Respondent O’Shaughnessy, the clerk of courts for Franklin County where Relator was convicted and sentenced, R.C. 2953.13 states:

When a defendant has been committed to a state correctional institution and the judgment by virtue of which the commitment was made is reversed on appeal, and the defendant is entitled to discharge or a new trial, or when the case is remanded to the trial court for any reason, the clerk of the court reversing the judgment or remanding the case, under the seal of the court, shall forthwith certify the reversal or remand to the warden of the state correctional institution.

{19} Respondent O’Shaughnessy acknowledges that a certified copy of the decision was first sent by certified mail to the incorrect ODRC warden and institution—Charmaine Bracey, warden of the Northeast Reintegration Center, another institution of the ODRC located at 2675 East 30th Street in Cleveland, Cuyahoga County, Ohio. She states that was the information they had in the system at the time of the Tenth District’s decision and upon learning of the error proceeded to send a certified copy of the decision by certified mail to Respondent LaRose. Respondent O’Shaughnessy has attached to her motion to dismiss a certified copy of the certified mail receipt substantiating that her office sent a certified copy of the Tenth District’s decision to Respondent LaRose. Relator argues this “attempt” to send the decision to Respondent LaRose is void. However, Relator offers no statutory or caselaw in support of this argument. Rather, the attachment to her motion to dismiss conclusively demonstrates that she sent the decision to Respondent LaRose. *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info.*

*Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶ 8 (“An event that causes a case to become moot may be proved by extrinsic evidence outside the record”); *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 26 (court can take judicial notice of appropriate matters in determining Civ.R. 12(B)(6) motion without converting it to a motion for summary judgment).

*R.C. 2953.13 – Warden’s Duty*

**{¶10}** The remainder of R.C. 2953.13 concerns the duty of Respondent LaRose and Respondent Annette Chambers-Smith:

The warden, on receipt of the certificate, if a discharge of the defendant is ordered, shall forthwith discharge the defendant from the state correctional institution.

If a new trial is ordered or the case is remanded, the warden shall forthwith cause the defendant to be conveyed to the jail of the county in which the defendant was convicted, and committed to the custody of the sheriff of that county.

**{¶11}** In this instance, the Tenth District did not order Relator’s discharge or order a new trial which would have necessitated his conveyance to the jail of the county in which he was convicted (Franklin County). Although the Tenth District remanded the case to the trial court, it was not the type of remand in which the Tenth District contemplated Relator’s conveyance from prison to the Franklin County jail. Rather it was a remand to the trial court with specific instructions concerning one specification attendant to one of multiple offenses.

**{¶12}** The last paragraph of the Court’s decision was specific and did not include any reference to a resentencing hearing or the necessity for Relator to be returned to Franklin County as a result of its decision:

Peoples has appealed from a decision denying his motion to vacate a void sentence. Because we agree that Peoples’ sentence under R.C. 2941.146 is void, we sustain his sole assignment of error. We reverse the trial court’s denial of Peoples’ August 7, 2017 motion to vacate, and we remand this matter to the trial court with instructions to vacate Peoples’ six-year sentence on the R.C. 2941.146 firearm specification and resentence

Peoples to the statutorily mandated five-year term for that specification. Peoples' three-year sentence on the R.C. 2941.145 firearm specification and his sentence on the underlying aggravated murder conviction remain unchanged. The computation of the start of his sentence on the aggravated murder conviction should be adjusted to reflect the one-year reduction in his sentence on the R.C. 2941.146 firearm specification.

**{¶13}** Eleven days later, the Franklin County Common Pleas Court issued an Amended Judgment Entry changing Relator's sentence for the drive-by specification from six years to five years. (06/10/2010 A.J.E.)

**{¶14}** As this Court has previously observed, there is a rule in Ohio that the law does not require futile or vain acts. *Love v. Beck Energy Corp.*, 7th Dist. Noble No. 14 NO 415, 2015-Ohio-1283, ¶ 40, citing *State ex rel. Teamsters Local Union 436 v. Cuyahoga Cty. Bd. of Commrs.*, 132 Ohio St.3d 47, 2012-Ohio-1861, 969 N.E.2d 224, ¶ 24 (parties do not need to pursue their administrative remedies if doing so would be a vain or futile act); *State ex rel. Strothers v. Turner*, 79 Ohio St.3d 272, 274, 680 N.E.2d 1238 (1997) (“[M]andamus will not issue to compel a vain act.”).

**{¶15}** The Franklin County Common Pleas Court's issuing of the Amended Judgment Entry in accordance with the Tenth District's decision makes the conveyance of Relator to the Franklin County jail a futile or vain act. Put another way, Relator's claim against Respondent LaRose and Respondent Annette Chambers-Smith is moot. The Tenth District acknowledged this as much in its decision, noting Relator has already served his term for both firearm specifications pursuant to R.C. 2929.14(C)(1)(a) which provides that a criminal defendant must serve any sentence for a firearm specification consecutively to and prior to any prison term imposed for the underlying felony. *State v. Peoples*, 10th Dist. Franklin No. 18AP-850, 2019-Ohio-2141, ¶ 14. Moreover, it added that Relator has not completed his overall prison sanction. Nonetheless, the Court, following Ohio Supreme Court precedent, proceeded to note, “when the prison-sanction portion of a sentence that also includes a void sanction has not been completely served, the void sanction may be modified.” *Id.*

**{¶16}** In *State ex rel. Ellis v. Burnside*, 8th Dist. Cuyahoga No. 103469, 2015-Ohio-5432, the Eight District Court of Appeals dismissed a mandamus action very similar

to the one Relator is pursuing here. In *Ellis*, the Eighth District had previously vacated one of relator's many convictions and remanded the case to the trial court to "carry this judgment into execution." Upon remand, the trial court corrected the judgment entry of sentence to reflect that particular conviction was vacated as void. But because the conviction was one of others which had been merged for sentencing, vacating the one conviction had no effect on relator's sentence. Relator appealed again arguing he should have been returned to the trial court for resentencing pursuant to Crim.R. 43 (Presence of defendant). The Eighth District rejected relator's argument noting the trial court's correction of relator's judgment entry of conviction and sentence pursuant to its previous decision outside of relator's presence did not constitute error under those circumstances. The Court likened its mandate to the trial court as ministerial in nature and did not require a resentencing hearing.

{¶17} Relator then filed an original action in mandamus in the Eighth District seeking to have it compel the warden to transport him to the trial court for resentencing. The Court dismissed the mandamus action, reiterating:

It must also be noted that requiring Ellis to be conveyed to the trial court would constitute a vain act because no resentencing was required. *State ex rel. Strothers v. Turner*, 79 Ohio St.3d 272, 1997-Ohio-154, 680 N.E.2d 1238. The trial court was simply required to discharge a ministerial act by vacating a conviction as ordered in *State v. Ellis*, 8th Dist. Cuyahoga No. 99830, 2014-Ohio-116.

*State ex rel. Ellis v. Burnside*, 8th Dist. Cuyahoga No. 103469, 2015-Ohio-5432, ¶ 7.

{¶18} In sum, each of the Respondents have fulfilled their legal duties to Relator—it would be unlawful to convey him to the Franklin County jail. He is currently serving a sentence of 25 years to life imprisonment for aggravated murdered. Not only is that sentence a mandatory sentence. R.C. 2929.13(F)(1). It is a sentence Relator must serve in prison, not jail. See R.C. 2929.13(F)(1); R.C. 2929.03(A); R.C. 2929.16(A)(2); R.C. 2929.15(A)(1).

{¶19} Accordingly, the Court sustains each Respondent’s respective motion to dismiss and dismisses Relator’s original action seeking a writ of mandamus. The Court overrules as moot all pending and as-yet ruled upon pleadings Relator has filed on his own behalf in this case subsequent to the filing of this original action.

{¶20} Costs taxed against Relator. Final order. Clerk to serve copies of this decision and judgment entry pursuant to the civil rules.

**JUDGE CAROL ANN ROBB**

**JUDGE CHERYL L. WAITE**

**JUDGE DAVID A. D’APOLITO**