

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State ex rel. Miller Scott

Court of Appeals No. S-10-014

Relator

v.

John P. Dewey, Presiding,
Harry Sargeant, Judge (retired)

DECISION AND JUDGMENT

Respondents

Decided: March 23, 2010

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Miller L. Scott, pro se.

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SINGER, J.

{¶ 1} Relator, Miller Scott, has filed a petition for a writ of mandamus against respondents, John P. Dewey, presiding judge and Harry Sargeant, retired judge, of the Sandusky County Court of Common Pleas. In the petition, relator requests that this court issue a writ of mandamus, pursuant to R.C. Chapter 2731, ordering respondents to issue a

judgment entry which is a final and appealable order in Sandusky County Court of Common Pleas case No. 06 CR 469.

{¶ 2} In order for a writ of mandamus to be issued, the petitioner must demonstrate a clear legal right to the relief prayed for, that respondents are under a clear duty to perform the act, and the relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 42.

{¶ 3} We initially note that although retired Judge Sargeant has been named as a respondent, relator's petition does not contain any factual allegations regarding any relationship between retired Judge Sargeant and the trial court judgment entry. Only Judge Dewey signed the correspondence which is the subject of this mandamus action. Therefore, relator's request for a writ of mandamus against Judge Sargeant must be dismissed for lack of any factual allegations which establish any claim against him.

{¶ 4} Regarding the allegations pertaining to Judge Dewey, in December 2009, this court issued a decision dismissing relator's appellate case because the judgment appealed from was not final and appealable. *State v. Scott*, appeal No. S-09-038. In that decision, we advised the trial court that a letter to relator, signed by the Sandusky County Court of Common Pleas Court Administrator, with a handwritten denial of a motion for resentencing and signature by Judge Dewey at the bottom, was not in the proper format to comply with the requirements for a final judgment pursuant to Civ.R. 58(A). We also delineated specific guidelines to assist the trial court judge to be able to issue a final and

appealable judgment. Therefore, since the trial court case is complete, relator is entitled to a final and appealable judgment.

{¶ 5} Pursuant to R.C. 2731.06, and because it is apparent that no valid excuse can be given by respondent for not issuing a proper final and appealable judgment, this court issues a peremptory writ of mandamus and orders that respondent, Judge John P. Dewey, prepare and issue a judgment entry in compliance with Civ.R. 58(A), *Brackman Communications, Inc. v. Rittner* (1987), 38 Ohio App.3d 107, 109, and *Shaver v. Standard Oil Co.* (1990), 68 Ohio App.3d 783, 791.

{¶ 6} Writ against retired Judge Harry Sargeant is denied and dismissed. Writ against Judge John P. Dewey is granted. Costs assessed to respondent, Judge John P. Dewey.

{¶ 7} To the clerk: Manner of service.

{¶ 8} The clerk of court, whom the court hereby specially authorizes to perfect service in this case, shall immediately serve, upon the respondent, Judge John P. Dewey, by personal service, a copy of this peremptory writ pursuant to R.C. 2731.08, and the clerk shall verify, by affidavit, the time, place, and manner of service and file such verification upon completion of the service.

{¶ 9} The clerk is further directed to immediately serve **upon all other parties** a copy of this peremptory writ in a manner prescribed by Civ.R. 5(B).

{¶ 10} It is so ordered.

PETITION GRANTED IN PART.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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