

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED."  
PURSUANT TO THE RULES OF CIVIL PROCEDURE  
PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C),  
THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE  
CITED OR USED AS BINDING PRECEDENT IN ANY OTHER  
CASE IN ANY COURT OF THIS STATE; HOWEVER,  
UNPUBLISHED KENTUCKY APPELLATE DECISIONS,  
RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR  
CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED  
OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE  
BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION  
BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED  
DECISION IN THE FILED DOCUMENT AND A COPY OF THE  
ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE  
DOCUMENT TO THE COURT AND ALL PARTIES TO THE  
ACTION.

# Supreme Court of Kentucky

2011-SC-000345-MR

COURTNEY TROWELL

APPELLANT

V.  
ON APPEAL FROM COURT OF APPEALS  
CASE NO. 2011-CA-000581-OA  
JEFFERSON CIRCUIT COURT NO. 04-CR-002358

HONORABLE BRIAN C. EDWARDS, JUDGE  
JEFFERSON CIRCUIT COURT

APPELLEE

AND

COMMONWEALTH OF KENTUCKY

REAL PARTY IN INTEREST

## MEMORANDUM OPINION OF THE COURT

### AFFIRMING

Courtney Trowell appeals from an Order of the Court of Appeals denying his petition for a writ of mandamus directing the Jefferson Circuit Court to enter an order vacating his conviction for murder and sentence. Because such use of a writ of mandamus is improper, we affirm the Court of Appeals' denial of Trowell's petition.

In 2005, Trowell was convicted of murder, for which he received a fifty-year sentence. This Court affirmed Trowell's conviction on his appeal as a matter of right. Trowell then filed a Kentucky Rule of Criminal Procedure (RCr) 11.42 motion in the Jefferson Circuit Court alleging ineffective assistance of counsel. The Circuit Court denied the motion without a hearing and the Court of Appeals affirmed. This Court denied discretionary review. On March 28,

2011, Trowell, *pro se*, petitioned the Court of Appeals for a writ of mandamus directing the Circuit Court to enter an order vacating his conviction and sentence. The Court of Appeals denied Trowell's petition and he now appeals to this Court as a matter of right pursuant to Civil Rule (CR) 76.36(7). Since a request that a court be ordered to vacate a conviction and sentence is an improper use of the writ of mandamus, we affirm the Court of Appeals.

A writ of mandamus is an extraordinary remedy which courts "are—and should be—loath to grant" unless absolutely necessary. *Cox v. Braden*, 266 S.W.3d 792, 795 (Ky. 2008). This Court reviews Court of Appeals decisions regarding a petition for a writ of mandamus for abuse of discretion. *Mahoney v. McDonald-Burkman*, 320 S.W.3d 75, 77 (Ky. 2010). A writ of mandamus operates to compel a court to take action but it "cannot be used to control the result." *Hargis v. Swope*, 272 Ky. 257, 114 S.W.2d 75, 77 (1938).

Mandamus will issue to compel the exercise of a discretionary duty, but not that it shall be exercised in any particular way. Mandamus is a proper remedy to compel an inferior court to adjudicate on a subject within its jurisdiction where it neglects or refuses to do so, but will not lie to revise or correct a decision. In short, mandamus will not lie to control the discretion of an inferior court.

*Id.* (internal citations omitted). See also *Humana of Kentucky, Inc. v. NKC Hospitals, Inc.*, 751 S.W.2d 369, 374 (Ky. 1988); *Mahoney*, 320 S.W.3d at 79. Thus, for example, in *Fannin v. Keck*, 296 S.W.2d 226, 227 (Ky. 1956), the former Court of Appeals refused to issue a writ of mandamus to compel the circuit court to enter summary judgment in the petitioner's favor. The Court in *Fannin* noted the petitioner did not seek the writ of mandamus to compel the

judge to act on the motion, but rather “to control [the judge’s] discretion and to compel him to grant summary judgment in petitioner's favor. Under these circumstances it is well-settled that this Court has no authority to issue the order requested.” *Id.* Similarly, in *Kaufman v. Humphrey*, 329 S.W.2d 575, 575 (Ky. 1959), the petitioner requested the Court issue a writ of mandamus requiring and directing the circuit court to enter an order allowing the petitioner to withdraw \$47,500.00 from a fund held by the court. Relying on the dictates of *Hargis*, the *Kaufman* Court held mandamus was not an appropriate means by which to seek such relief. *Id.* Especially pertinent to this case, in *May v. Conley*, 408 S.W.2d 431, 432 (Ky. 1966), the Court denied the petitioner’s request for a writ of mandamus to compel the circuit court to vacate his conviction and sentence. The Court therein found such use of a writ of mandamus was improper. *Id.* “The function of mandamus is not to compel a court to decide a matter in a particular way.” *Id.*

In this case, Trowell does not request a writ of mandamus to compel the circuit court to take action on a subject within its jurisdiction where it has refused or neglected to act. The circuit court here has acted, by providing Trowell with a fair trial, properly sentencing him, and timely ruling on his RCr 11.42 motion.<sup>1</sup> Rather, as in *Fannin*, *Kaufman* and *May*, Trowell requests this Court control the discretion of the circuit court by directing it to act in a particular way. As thoroughly explained in *Hargis* and consistently reiterated

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<sup>1</sup> Trowell’s specific legal arguments regarding his counsel and the venire panel could, and should, have been raised in his RCr 11.42 motion or even his direct appeal of the conviction.

in later cases, this is not a permissible use of the writ of mandamus. The Court of Appeals is affirmed.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Courtney Trowell, *Pro se*, #186838  
Eastern Kentucky Correctional Complex  
200 Road to Justice  
Dorm 7-DL4  
West Liberty, KY 41472

COUNSEL FOR APPELLEE AND  
REAL PARTY IN INTEREST:

Jack Conway  
Attorney General of Kentucky

Kenneth Wayne Riggs  
Assistant Attorney General  
Office of the Attorney General  
1024 Capital Center Drive  
Frankfort, KY 40601