

**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**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

RENDERED: JUNE 13, 2019  
NOT TO BE PUBLISHED

Supreme Court of Kentucky **FINAL**

2018-SC-000582-MR DATE 7/5/19 Kim Redman, DC

STANLEY M. CARDINE

APPELLANT

V. ON APPEAL FROM KENTUCKY COURT OF APPEALS  
NO. 2018-CA-001084  
JEFFERSON CIRCUIT COURT NO. 82-CR-00768

HONORABLE MCKAY A.C. CHAUVIN,  
JUDGE, JEFFERSON CIRCUIT COURT

APPELLEE

AND

COMMONWEALTH OF KENTUCKY

REAL PARTY IN INTEREST

**MEMORANDUM OPINION OF THE COURT**

**AFFIRMING**

A writ of prohibition or mandamus is a discretionary remedy applied by an appellate court to remedy trial court error which effectively has no adequate remedy by appeal. The issue we resolve in this case is whether the Court of Appeals erred in denying Stanley M. Cardine's writ of mandamus petition more than thirty-four years following his conviction in Jefferson Circuit Court. We hold that the Court of Appeals did not err and therefore affirm its Order denying Cardine relief.

In September 1983, a jury found Cardine guilty of third-degree burglary and of being a persistent felony offender in the first degree, sentencing him to

twenty-years' imprisonment. On September 29, 1983, Cardine's counsel orally moved for a new trial and judgment notwithstanding the verdict. Both of these motions were orally denied by the then trial judge, Henry Hopson. However, Judge Hopson accidentally signed Cardine's tendered order for judgment notwithstanding the verdict, omitting normal practice of writing "overruled" across order. No party noticed the error. While Cardine's counsel prepared for a direct appeal of the conviction, the order was discovered and presented to the warden of the prison where he was incarcerated. Based on Judge Hopson's "order," the warden released Cardine.

Upon discovering this error, in June 1985,<sup>1</sup> the Commonwealth moved to correct the error pursuant to CR<sup>2</sup> 60.01. By that time, the trial judge was William E. McAnulty.<sup>3</sup> At a hearing on the motion, former Judge Hopson,<sup>4</sup> the Commonwealth's Attorney, and Cardine's trial counsel all testified that Cardine's motions for new trial and judgment notwithstanding the verdict had been orally denied and the error on the written order was a clerical mistake. Judge McAnulty denied the Commonwealth's motion and held that the error by

---

<sup>1</sup> After his release, Cardine pressed his luck and sued his trial attorneys for malpractice, alerting the press and eventually the Commonwealth of Judge Hopson's error. See *Commonwealth v. Cardine*, No. 85-2947-MR, slip op. at 2 (Ky. App. Dec. 19, 1986). Instead of winning a judgment against his trial attorneys, Cardine soon found himself back in the custody of the Commonwealth. See *id.* at 3.

<sup>2</sup> Kentucky Rules of Civil Procedure.

<sup>3</sup> Judge McAnulty, who subsequently served on the Court of Appeals and the Supreme Court of Kentucky died in 2007. The current judge of the Jefferson Circuit Court, Eighth Division is Judge McKay A.C. Chauvin.

<sup>4</sup> Judge Hopson died in 1991.

the original trial court judge did not comport with the language of RCr<sup>5</sup> 10.10 and thus, was not a clerical error. The Commonwealth appealed that decision and the Court of Appeals reversed, reinstating Cardine's conviction. This Court declined discretionary review.

Following the reinstatement of his conviction, Cardine directly appealed his original conviction, and filed post-conviction proceedings in both state and federal courts. All of his subsequent appeals, which included the exact issues he now argues for in his writ petition, have been denied. *See Cardine v. Parke*, No. 88-5917, 1989 WL 78941, at \*4 (6th Cir. July 18, 1989); *Commonwealth v. Cardine*, No. 85-2947-MR, slip op. at 3 (Ky. App. Dec. 19, 1986).

The present proceeding appears to have its origin directly in the Court of Appeals, via Cardine's petition for writ of mandamus. As noted, the Court of Appeals denied the petition by order. Cardine appeals that denial.

The standard for a writ petition is well-established.

A writ of prohibition *may* be granted upon a showing that (1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted.

*Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004).

Cardine's argument that he meets the requisite showing for issuance of a writ fails unconditionally. As an initial matter, Cardine's criminal conviction

---

<sup>5</sup> Kentucky Rules of Criminal Procedure.

was final long ago. No current proceeding in Jefferson Circuit Court exists as to which the Court of Appeals could order it to act. Secondly, Cardine had the ability to and, in fact, did seek relief from the original CR 60.01 decision of the Court of Appeals and his direct appeal from the amended judgment. This Court denied his application for discretionary review on those claims over thirty years ago. Additionally, Cardine's secondary claim is best construed as a *Strickland*<sup>6</sup> ineffective assistance of counsel claim which was previously denied by the Sixth Circuit. *Cardine*, 1989 WL 78941, at \*4.

Petitioning for a writ of mandamus well over thirty years after the alleged errors occurred—in an effort to relitigate issues previously decided in federal and state courts—is not a proper use of the writ system. Accordingly, Cardine's Petition for a Writ of Mandamus is DENIED, and the opinion of the Court of Appeals is AFFIRMED.

Minton, C.J.; Buckingham, Hughes, Keller, VanMeter, and Wright, JJ., sitting. All concur. Lambert, J., not sitting.

COUNSEL FOR APPELLANT:

Stanley M. Cardine, Pro se

COUNSEL FOR APPELLEE  
HONORABLE MCKAY A.C. CHAUVIN:

Not Represented by Counsel

---

<sup>6</sup> *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

COUNSEL FOR REAL PARTY IN INTEREST:

Andy Beshear  
Attorney General of Kentucky

James Coleman Shackelford  
Assistant Attorney General