

[Cite as *State ex rel. Atkinson v. Ohio Adult Parole Auth.*, 2009-Ohio-6654.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93518

**STATE OF OHIO EX REL.,
LASHAWN ATKINSON**

RELATOR

vs.

OHIO ADULT PAROLE AUTHORITY

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus
Motion No. 424315
Order No. 428913

RELEASE DATE: December 11, 2009

FOR RELATOR

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ANN DYKE, J.:

{¶ 1} Relator, Lashawn Atkinson, is the defendant in *State v. Atkinson*, Cuyahoga County Court of Common Pleas Case No. CR-456940. Atkinson was sentenced to three years. When he was released from prison in January 2008, the Ohio Adult Parole Authority (“APA”) placed Atkinson on postrelease control for five years.¹

¹ A review of the docket in Case No. CR-456940 reflects that the trial court issued a resentencing entry on July 31, 2009. Atkinson’s appeal of that judgment is pending as *State v. Atkinson*, Case No. 93855.

{¶ 2} Atkinson argues that APA did not have the authority to place him on postrelease control because he was not informed of postrelease control at his sentencing hearing. Atkinson requests that this court issue a writ of mandamus and “order Respondent Ohio Adult Parole Authority, to promptly remove/vacate its illegal **January 14th 2008** order of five years PRC that the APA imposed on Relator Atkinson.” (Emphasis in original.) Complaint, ad damnum clause.

{¶ 3} Respondent has filed a motion to dismiss. Atkinson has opposed the motion to dismiss and argues, inter alia, that the APA’s postrelease control order is illegal and that he does not have an adequate remedy in the ordinary course of the law. For the reasons stated below, we grant the motion to dismiss.

{¶ 4} Respondent argues that Atkinson has or had an adequate remedy by way of appeal to challenge the propriety of the inclusion of postrelease control in the sentencing entry. In *Jackson v. Phillips*, Cuyahoga App. No. 91963, 2009-Ohio-125, at ¶10 (denying an application for habeas corpus), this court discussed *Patterson v. Ohio Adult Parole Auth.*, 120 Ohio St.3d 311, 2008-Ohio-6147, 898 N.E.2d 950. In *Patterson*, the posture of the underlying case was comparable to that in the Case No. CR-456940.

{¶ 5} “*Patterson* is particularly instructive * * *. In that case, Patterson commenced a habeas corpus to contest his post-release control sanctions. He claimed that the trial judge failed to notify him of post-release control during the sentencing hearing, although the judge included it in the sentencing entry. The Supreme Court of Ohio upheld the dismissal of the habeas corpus action on the

grounds of adequate remedy at law. ‘Patterson had an adequate remedy by way of direct appeal from his sentence to raise his claim that he did not receive proper notification about postrelease control at his sentencing hearing. E.g., *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78, ¶ 45 (“The remedy for improper notification about postrelease control at the sentencing hearing is resentencing-not release from prison” and ¶ 53 (“habeas corpus is not available to contest any error in the sentencing entries, and petitioners have or had an adequate remedy by way of appeal to challenge the imposition of postrelease control”).’ *Patterson* at ¶ 8.” *Jackson*, supra, at ¶10.

{¶ 6} Although *Patterson* and *Jackson* were actions in habeas corpus, this case presents the same issue: whether the petitioner/relator has or had an adequate remedy if, as Atkinson avers in the complaint, the petitioner/relator was not informed at sentencing that he was subject to postrelease control, but the sentencing entry did include the imposition of postrelease control. In light of the holding in *Patterson*, therefore, we must conclude that appeal is the remedy which Atkinson should pursue or should have pursued, not an original action in mandamus.

{¶ 7} We also note that Atkinson has not provided this court with any controlling authority that would prevent APA from acting in conformity with the sentencing entry by imposing postrelease control. As a consequence, Atkinson has not demonstrated that APA has a clear legal duty to vacate its order enforcing postrelease control or that Atkinson has a clear legal right to that relief.

{¶ 8} Accordingly, respondent's motion to dismiss is granted. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Complaint dismissed.

ANN DYKE, PRESIDING JUDGE

MARY J. BOYLE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR