

[Cite as *State ex rel. Barr v. Sutula*, 2010-Ohio-926.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94530

**STATE OF OHIO, EX REL.
HARRY BARR**

RELATOR

vs.

HONORABLE JOHN D. SUTULA

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus

Order No. 430873

RELEASE DATE: March 9, 2010

FOR RELATOR

Harry M. Barr, pro se
Inmate No. 522-149
Lorain Correctional Institution
2075 South Avon Belden Road
Grafton, Ohio 44044

ATTORNEY FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

CHRISTINE T. MCMONAGLE, P.J.:

{¶ 1} Harry Barr, the relator, has filed a complaint for a writ of mandamus. Barr seeks an order from this court, which requires Judge John D. Sutula, the respondent, to re-enter a judgment entry of conviction and sentence in the underlying action of *State v. Barr*, Cuyahoga County Court of Common Pleas Case No. CR-480727. For the following reasons, we sua sponte dismiss Barr’s complaint for a writ of mandamus.

{¶ 2} Barr, through his complaint for a writ of mandamus, argues that the sentencing journal entry of February 6, 2007, fails to comport with the requirements of Crim.R. 32(C) and R.C. 2505.02. Specifically, Barr argues that the failure to include within the sentencing journal entry, that he was found guilty “by a bench

trial,” results in a defective sentencing journal entry that requires re-sentencing and entry of a new sentencing journal entry.

{¶ 3} Contrary to Barr’s argument, the sentencing journal entry of February 6, 2007, is not defective and fully complies with Crim.R. 32(C) and R.C. 2505.02. The Supreme Court of Ohio, in *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, established that a sentencing journal entry is a final appealable order under R.C. 2505.02 and complies with Crim.R. 32(C) when it sets forth: (1) the guilty plea, the jury verdict, or **the finding of the court upon which the conviction is based**; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of the court. *Baker* does not require, as argued by Barr, the inclusion of the language “by a bench trial.” Compliance with *Baker* simply requires a statement as to the means of conviction.

{¶ 4} In the case sub judice, the sentencing journal entry of February 6, 2007, provides that “[o]n a former day of court, the court found the defendant guilty of robbery 2911.02 - F2 with notice prior conviction, repeat violent offender specification 2941.149 as charged in count(s) 2 of the indictment. The sentencing journal entry fully complies with the means of conviction requirement as established in *Baker*. Thus, Judge Sutula possesses no duty to re-sentence Barr. It must also be noted that neither mandamus nor procedendo will compel the performance of a duty that has already been performed. *State ex rel. Fontanella v. Kantos*, 117 Ohio

St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220; *State ex rel. Howard v. Doneghy*, 102 Ohio St.3d 355, 2004-Ohio-3207, 810 N.E.2d 958.

{¶ 5} Accordingly, we sua sponte dismiss Barr's complaint for a writ of mandamus. Costs to Barr. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Complaint dismissed.

CHRISTINE T. MCMONAGLE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
COLLEEN CONWAY COONEY, J., CONCUR