

[Cite as *State ex rel. Ali v. Clancy*, 2015-Ohio-4594.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103328

**STATE OF OHIO, EX REL.
OSIRIS ALI**

RELATOR

vs.

HON. JUDGE MAUREEN E. CLANCY

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus
Motion No. 488483
Order No. 489998

RELEASE DATE: October 30, 2015

FOR RELATOR

Osiris Ali
Inmate No. 503-171
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, Ohio 44030

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Osiris Ali has filed a complaint for a writ of mandamus. Ali seeks an order from this court that requires Judge Maureen E. Clancy to vacate the conviction and sentence of incarceration imposed in *State v. Ali*, Cuyahoga C.P. No. CR-05-465969 based upon the claims that: 1) he was improperly convicted of multiple counts of rape (R.C. 2907.02(A)(1)(b)) and multiple counts of unlawful conduct with a minor (R.C. 2907.04(B)(3)) in violation of the Double Jeopardy Clause of the United States and Ohio Constitutions; and 2) he was improperly convicted of unlawful conduct with a minor as a lesser included offense in counts 15, 20, 21, 22, 23, 74, and 77 of the indictment. Judge Clancy has filed a motion to dismiss, which we grant for the following reasons.

{¶2} In order for this court to issue a writ of mandamus, Ali is required to establish: 1) he possesses a clear legal right to have his conviction and sentence of incarceration vacated; (2) Judge Clancy possesses a clear legal duty to vacate the conviction and sentence; and 3) there exists no other adequate remedy in the ordinary course of the law. R.C. 2731.05; *State ex rel. Walker v. Lancaster City School Dist. Bd. of Edn.*, 79 Ohio St.3d 216, 680 N.E.2d 993 (1997); *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Herein, Ali has failed to establish each prong of the aforesaid three-part test.

{¶3} Ali's double jeopardy claim is not cognizable through a writ of mandamus. *State ex rel. Hawk v. Athens Cty.*, 106 Ohio St.3d 183, 2005-Ohio-4383, 833 N.E.2d 296.

In addition, Ali possesses or possessed an adequate remedy at law by direct appeal to raise his challenge to the claim that he was unlawfully convicted of unlawful conduct with a minor, as a lesser included offense of rape, in counts 15, 20, 21, 22, 23, 74, and 77 of the indictment. In fact, Ali raised the claim that was unlawfully convicted of the lesser included offense of unlawful conduct with a minor in his original appeal. In *State v. Ali*, 8th Dist. Cuyahoga No. 88147, 2007-Ohio-3776, this court held that:

In the appellant's eighth assignment of error, he argues that he "was denied due process of law when he was found guilty of unlawful sexual conduct with a minor as a lesser included offense of rape." A cursory review of the record shows that appellant misrepresents the court's findings. Appellant was found guilty of unlawful sexual conduct of a minor with respect to D.D., and he was found guilty of rape with respect to S.B. These convictions were mutually exclusive as they involved two separate victims and one was not a lesser included offense of the other. Appellant was convicted consistently with his indictment, and his eighth assignment of error is overruled.

Id., at 13.

{¶4} Moreover, Ali has filed twelve additional appeals through which he has attempted to challenge the conviction and sentence of incarceration imposed in CR-05-465969. See appeals as filed in *State v. Ali*, 8th Dist. Cuyahoga Nos. 96465, 97612, 99062, 100593, 100730, 100809, 101129, 102235, 102757, 103049, and 103214. Ali has or had an adequate remedy by appeal from his conviction and sentence to raise the claims of double jeopardy and lesser included offenses. Thus, Ali has failed to establish that he is entitled to a writ of mandamus. *State ex rel. Elkins v. Fais*, Slip Opinion No. 2015-Ohio-2873; *Turner v. Dept. of Rehab. & Corr.*, Slip Opinion No. 2015-Ohio-2833; *State ex rel. Walker v. State*, 142 Ohio St.3d 365, 2015-Ohio-1481, 30 N.E.3d 947; *State*

ex rel Turner v. Corrigan, 142 Ohio St.3d 303, 2015-Ohio-980, 29 N.E.3d 962; *State ex rel. Nickleson v. Mayberry*, 131 Ohio St.3d 416, 2012-Ohio-1300, 965 N.E.2d 1000.

{¶5} Finally, Loc.App.R. 23 provides that a party may be declared a vexatious litigator if it is determined that an appeal, original action, or motion is frivolous or that a party habitually, persistently, and without reasonable cause engages in frivolous conduct.

The filing of twelve appeals, an App.R. 26(B) application for reopening, as well as this complaint for a writ of mandamus, constitutes behavior that borders on being frivolous. Therefore, Ali is forewarned that the continued filing of appeals and original actions, based upon the claims that: 1) he was improperly convicted of multiple counts of rape (R.C. 2907.02(A)(1)(b)) and multiple counts of unlawful conduct with a minor (R.C. 2907.04(B)(3)) in violation of the Double Jeopardy Clause of the United States and Ohio Constitutions; and 2) he was improperly convicted of unlawful conduct with a minor as a lesser included offense in counts 15, 20, 21, 22, 23, 74, and 77 of the indictment, shall result in the declaration of being a vexatious litigator. If declared a vexatious litigator, Ali exposes himself to the potential sanctions of: 1) requiring leave of this court to file an appeal or original action, and 2) forfeiture of his indigency status.

{¶6} Accordingly, we grant Judge Clancy's motion to dismiss. Costs to Ali. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶7} Complaint dismissed.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

LARRY A. JONES, SR., J., and
MELODY J. STEWART, J., CONCUR