

[Cite as *State ex rel. Cowan v. Gallagher*, 2015-Ohio-5156.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103470

STATE OF OHIO, EX REL.
CRAIG A. COWAN

RELATOR

vs.

JUDGE SHANNON M. GALLAGHER, ET AL.

RESPONDENTS

JUDGMENT:
WRIT DISMISSED

Writ of Mandamus
Motion No. 489624
Order No. 490952

RELEASE DATE: December 4, 2015

FOR RELATOR

Craig A. Cowan, pro se
Inmate No. 622034
Grafton Correctional Institution
2500 South Avon Belden Road
Grafton, Ohio 44044

ATTORNEYS FOR RESPONDENTS

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

MELODY J. STEWART, J.:

{¶1} Craig Cowan has filed a complaint for a writ of mandamus. Cowan seeks an order from this court, which requires Judge Shannon M. Gallagher to render a ruling on a motion for self-representation that he filed on October 5, 2011, in *State v. Cowan*, Cuyahoga C.P. No. CR-11-550536. Cowan seeks an order compelling Cuyahoga County Prosecutor Timothy McGinty to respond to the motion for self-representation. Respondents have filed a motion to dismiss, which we grant for the reasons that follow.

{¶2} In January 2012, Cowan was found guilty of several offenses following a trial. The court imposed a prison sentence and the entry was journalized on January 19, 2012. Cowan filed an appeal on January 26, 2012. *See State v. Cowan*, 8th Dist. Cuyahoga No. 97877, 2012-Ohio-5723. Cowan's appellate counsel raised five assignments of error and Cowan was granted leave to file a supplemental pro se brief but he was also instructed not to exceed ten pages. Because Cowan failed to comply with the page limitation set by the court's order, his supplemental brief was stricken. Cowan's convictions were affirmed but his sentence was vacated in part and the matter was remanded to the trial court to consider whether consecutive sentences were appropriate and, if so, to enter the proper findings on the record. *Id.* Cowan's application to reopen the appeal in Appeal No. 97877 was denied. *State v. Cowan*, 8th Dist. Cuyahoga No. 97877, 2013-Ohio-1172. Cowan has pursued numerous other appeals in relation to his conviction and sentence in CR-11-550536. *E.g.*, *State v. Cowan*, 8th Dist. Cuyahoga No. 99566, 2013-Ohio-4475; *State v. Cowan*, 8th Dist. Cuyahoga No. 100741, 2014-Ohio-3593; *State v. Cowan*, 8th Dist. Cuyahoga No. 101995, 2015-Ohio-2271.

{¶3} Respondents have moved for dismissal of this action on multiple grounds. First, respondents cite Cowan's failure to comply with Civ.R. 10(A) because he did not include his

address in the caption as required by the rule. Secondly, respondent McGinty moves for dismissal for Cowan's failure to state a claim against him upon which relief could be granted. This court has held that mandamus does not lie to compel a prosecutor to respond to motions filed by a defendant. *Turner v. McGinty*, 8th Dist. Cuyahoga No. 102074, 2015-Ohio-529, ¶ 7, citing *State ex rel. Peebles v. Anderson*, 73 Ohio St.3d 559, 1995-Ohio-335, 653 N.E.2d 371. Finally, respondents contend Cowan is not entitled to the writ for the following reasons: (1) the motion was deemed denied upon disposition of the underlying criminal case; (2) the claim is barred by res judicata; and (3) he had an adequate remedy at law through his direct appeal.

{¶4} This court has held that “[a]ny pending motions, upon disposition of the underlying criminal cases, are ‘deemed to be denied.’” *State ex rel. Harris v. Sheehan*, 8th Dist. Cuyahoga No. 93516, 2009-Ohio-4196, ¶ 3; *see also State ex rel. Nash v. Fuerst*, 8th Dist. Cuyahoga No. 99027, 2013-Ohio-592, ¶ 8 (finding relator failed to state a claim in mandamus to compel rulings on motions that were deemed to be moot). Thus, Cowan has not stated a claim in mandamus to compel a ruling on the motion he filed on October 5, 2011.

{¶5} Cowan relies on this court's decision in *Turner* in support of his claim for mandamus to compel a ruling on this motion for self-representation. In *Turner*, this court held that the trial court had a duty to rule on the pending motion for self-representation even though Turner had court-appointed counsel at the time he filed it. Cowan's reliance on this court's decision in *Turner* is misplaced because there had been no disposition in the underlying criminal case in that matter. The motion for self-representation was actually pending at the time Turner commenced his action. The charges against Turner had not yet been resolved at the time he sought a writ of mandamus to compel the court to address his pending motion for self-representation. Conversely, Cowan was convicted in 2013, and this court affirmed his

convictions. The 2011 motion for self-representation was effectively denied prior to the time Cowan commenced his first appeal. Accordingly, Cowan had an adequate remedy at law to challenge the denial of his right to self-representation in his direct appeal. But for his failure to comply with this court's order, that issue would have been addressed in the direct appeal. *Cowan*, 2013-Ohio-1172, ¶ 4.

{¶6} Respondents' motion is granted and the petition for writ of mandamus is dismissed. Relator to pay costs. 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).

{¶7} Writ denied.

MELODY J. STEWART, JUDGE

LARRY A. JONES, SR., P.J., and
MARY J. BOYLE, J., CONCUR