

[Cite as *State ex rel. Rendell v. Russo*, 2016-Ohio-4711.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 104097

---

**STATE OF OHIO, EX REL.  
CORNELIUS J. RENDELL**

RELATOR

vs.

**JOHN J. RUSSO, ADMINISTRATIVE JUDGE**

RESPONDENT

---

**JUDGMENT:  
WRIT DENIED**

---

Writ of Mandamus  
Motion No. 494271  
Order No. 497128

**RELEASE DATE:** June 28, 2016

**FOR RELATOR**

Cornelius J. Rendell, pro se  
Inmate No. 630-741  
Grafton Correctional Institution  
2500 South Avon Belden Road  
Grafton, Ohio 44044

**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

MARY J. BOYLE, J.:

{¶1} On February 9, 2016, the relator, Cornelius Rendell, commenced this mandamus action against the respondent, Judge John J. Russo, to compel the judge to dismiss the underlying case, *State v. Rendell*, Cuyahoga C.P. No. CR-12-561052-A, for denial of speedy trial rights under R.C. 2941.401. On March 10, 2016, the respondent moved for summary judgment on the grounds of mootness; attached to the dispositive motion was a copy of a certified journal entry file-stamped March 9, 2016, denying Rendell's R.C. 2941.401 motion to dismiss. Rendell filed his brief in opposition on April 8, 2016. For the following reasons, this court grants the judge's summary judgment motion and denies the application for a writ of mandamus.

{¶2} As shown by the Ohio Department of Rehabilitation and Correction's website, since July 24, 2012, Rendell has been serving a six-year term of imprisonment for drug trafficking arising in Summit County. The Cuyahoga County Grand Jury indicted him on April 5, 2012, in the underlying case for drug trafficking, drug possession, and possession of criminal tools, but the case has not proceeded to resolution. On April 17, 2014, Rendell alleges that he filed his notice of availability pursuant to R.C. 2941.401 with the Cuyahoga County Clerk of Courts.<sup>1</sup> After the passage of six months, on

---

<sup>1</sup>R.C. 2941.401 provides in pertinent part: "When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment \* \* \* against the prisoner, he shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his

October 21, 2014, Rendell moved the trial court to dismiss the underlying case with prejudice pursuant to the statute. Rendell repeated this motion on April 17, 2015. When there was no action on these motions, Rendell commenced the instant mandamus action. Subsequently, the respondent denied the motion on March 9, 2016, because Rendell had not substantially complied with R.C. 2941.401.<sup>2</sup> Rendell has appealed that decision.

{¶3} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108; *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.*, 56 Ohio St.3d 33, 564 N.E.2d 86 (1990).

---

imprisonment and a request for a final, disposition to be made of the matter \* \* \*.” This request of the prisoner shall be accompanied by the certificate of the warden stating the prisoner’s term, the time served, the remaining time to be served, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the adult parole board relating to the prisoner.

“If the action is not brought to trial within the time period provided, \* \* \* no court any longer has jurisdiction thereof, the indictment \* \* \* is void, and the court shall enter an order dismissing the action with prejudice.”

<sup>2</sup>This court notes that Rendell’s “Motion for notice of availability” that he attached to his mandamus complaint does not indicate a separate notice to the prosecutor, nor does it have the required warden’s certificate.

{¶4} In *State ex rel. Bowling v. Court of Common Pleas of Hamilton Cty.*, 24 Ohio St.2d 158, 265 N.E.2d 296 (1970), the Supreme Court of Ohio ruled that the proper remedy for enforcing R.C. 2941.401 is a motion to dismiss filed in the trial court. The existence of that adequate remedy at law precludes a mandamus action to effect the statute. *State ex rel. Elder v. Matia*, 8th Dist. Cuyahoga No. 101195, 2014-Ohio-3598; and *Henderson v. Lebaron*, 8th Dist. Cuyahoga No. 84030, 2004-Ohio-1002. Therefore, the existence of an adequate remedy at law that Rendell has pursued precludes the issuance of a writ of mandamus.

{¶5} Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of mandamus. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶6} Writ denied.

MARY J. BOYLE, JUDGE

EILEEN T. GALLAGHER, P.J., and  
ANITA LASTER MAYS, J., CONCUR