

[Cite as *State ex rel. Hughes v. Cuyahoga Cty.*, 2016-Ohio-5936.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104478

**STATE OF OHIO, EX REL.
KENNETH HUGHES**

RELATOR

vs.

CUYAHOGA COUNTY, STATE OF OHIO

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 497208
Order No. 499240

RELEASE DATE: September 19, 2016

FOR RELATOR

Kenneth Hughes, pro se
Inmate No. A406-858
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Saint Clairsville, Ohio 43950

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., J.:

{¶1} Kenneth Hughes has filed a complaint for a writ of mandamus to compel the Cuyahoga County Court of Common Pleas to vacate the criminal sentence imposed in *State v. Hughes*, Cuyahoga C.P. No. CR-00-398499, and resentence him. Hughes argues that “he has a right to a final appealable order, and that the trial court failed to properly provide this final appealable order in violations against Crim.R. 32(C).” Hughes argues that the sentence imposed by the Cuyahoga County Court of Common Pleas was defective and must be vacated because:

- 1) The trial court imposed an erroneous and void thirty (30) year term upon Hughes. The sentence is nullity or void because it does not comply with the statutory sentencing guidelines and is contrary to the dictates found in Criminal Rule 32(C).
- 2) The trial court lacked jurisdiction to have entered judgment to which it nulled one of the firearm specifications in Count One of the indictment and nulled both firearm specifications in Count Two of the indictment. The actions and inactions have rendered (1) the nulled firearm specifications still pending; and (2) the purported judgment entry non-final or appealable and is contrary to the dictates found in Criminal Rule 32(C).
- 3) The trial court failed to render a final judgment entry of conviction and sentence when the court did not dispose of the pending firearm specification contained in Counts 3 and 5 of the indictment. The trial court’s actions are contrary to the dictates found in Criminal Rule 32(C).
- 4) The judgment entry of conviction and sentence does not comply with the dictates found in Criminal Rule 32(C). The trial court did not render a finding as to the accompanied firearm specifications contained in Count One of the indictment for the three-year firearm specification-R.C. 2941.145.

5) Trial court failed to independently and separately render a finding of guilt as to Counts One and Two aggravated murder with firearm specifications. Therefore, the court purported judgment entry does not comply with the dictates found in Criminal Rule 32(C).

6) The trial court attempted finding as to aggravated murder with mass murder specifications and sentencing the defendant to two thirty-year terms based on such, is a nullity or void and does not comply with the dictates found in Criminal Rule 32(C). Further, Hughes [’s] sentence is void as the trial court sentenced Hughes to two thirty-year terms based on an identical mass murder specification as it violated Ohio Revised Code 2941.25.

The Cuyahoga County Court of Common Pleas has filed a motion for summary judgment that is granted for the following reasons.

{¶2} In order for this court to issue a writ of mandamus, Hughes must clearly establish that: (1) he possesses a clear legal right to the requested relief, (2) the Cuyahoga County Court of Common Pleas possesses a clear legal duty to perform the requested relief, and (3) there exists no other adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452; *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 650 N.E.2d 899 (1995).

{¶3} A writ of mandamus will not issue if there exists a plain and adequate remedy in the ordinary course of the law. *State ex rel. Ullman v. Hayes*, 103 Ohio St.3d 405, 2004-Ohio-5469, 816 N.E.2d 245. Any sentencing errors that are committed by a court possessing proper jurisdiction over a criminal matter may not be remedied through an extraordinary writ. *See generally Smith v. Warren*, 89 Ohio St.3d 467, 732 N.E.2d 992 (2000) (prohibition); *Majoros v. Collins*, 64 Ohio St.3d 442, 596 N.E.2d 1038 (1992)

(habeas corpus); *State ex rel. Corrigan v. Lawther*, 39 Ohio St.3d 157, 529 N.E.2d 1377 (1988) (mandamus).

{¶4} A review of the docket maintained in CR-00-398499, clearly demonstrates that Hughes has availed himself of adequate remedies in the ordinary course of the law, e.g., postconviction relief and appeals, with regard to his claimed sentencing errors. The following motions and appeals were filed by Hughes:

1) March 15, 2002 — appeal from conviction and sentence — *State v. Hughes*, 8th Dist. Cuyahoga No. 81019;

2) July 31, 2009 — motion to vacate and/or set aside sentence;

3) August 7, 2009 — motion to vacate and/or set aside sentence;

4) August 7, 2009 — motion to withdraw guilty plea instante;

5) June 7, 2010 — motion to vacate and/or set aside sentence;

6) June 7, 2010 — motion to dismiss indictment for failure to charge an offense pursuant to Crim.R. 12(C)(2);

7) August 31, 2010 — appeal from denial of motion to vacate and/or set aside void sentence and motion to dismiss indictment for failure to charge an offense pursuant to Crim.R. 12(C)(2) — *State v. Hughes*, 8th Dist. Cuyahoga No. 95639;

8) December 29, 2010 — motion for resentencing and issue final appealable order;

9) April 11, 2011 — appeal from denial of motion for resentencing and issue final appealable order — *State v. Hughes*, 8th Dist. Cuyahoga No. 96648;

10) August 11, 2011 — motion to withdraw guilty plea;

11) September 14, 2011 — appeal from denial of motion to withdraw guilty plea — *State v. Hughes*, 8th Dist. Cuyahoga No. 97311;

12) March 21, 2012 — motion to correct void sentence;

13) May 30, 2012 — appeal from denial of motion to correct void sentence — *State v. Hughes*, 8th Dist. Cuyahoga No. 98412;

14) September 19, 2012 — motion to correct void sentence;

15) November 9, 2012 — appeal from denial of motion to correct void sentence — *State v. Hughes*, 8th Dist. Cuyahoga No. 99165;

16) March 6, 2015 — motion to revise/correct judgment entry of conviction and sentence with de novo resentencing requested as though sentencing had never previously occurred.

{¶5} Hughes has or had numerous adequate remedies in the ordinary course of the law, which addressed or could have addressed the issue of a defective sentence. *State ex rel. Ward v. Reed*, 141 Ohio St.3d 50, 2014-Ohio-4512, 21 N.E.3d 303; *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 673 N.E.2d 1281 (1997), and *State ex rel. Sevayega v. McMonagle*, 122 Ohio St.3d 54, 2009-Ohio-2367, 907 N.E.2d 1180.

{¶6} Moreover, Hughes’s claim for a writ of mandamus is barred by the doctrine of res judicata. Res judicata “involves both claim preclusion (historically called estoppel by judgment in Ohio) and issue preclusion (traditionally known as collateral estoppel).” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 653 N.E.2d 226 (1995). Claim

preclusion provides that “[a] final judgment or decree rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction * * * is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them.” *Id.*, quoting *Norwood v. McDonald*, 142 Ohio St. 299, 52 N.E.2d 67 (1943), paragraph one of the syllabus.

{¶7} The issues of a defective guilty plea, failure to comply with Crim.R. 32, void sentence, and improper disposition and sentencing with regard to firearm specifications were raised and found to be not well taken in 8th Dist. Cuyahoga Nos. 81019, 97311, and 99165. Because the issues raised in the present complaint for a writ of mandamus were previously addressed and adjudicated in three prior appeals, we find that res judicata is applicable to the present complaint for a writ of mandamus that prevents any further litigation of these issues.

{¶8} Accordingly, we grant the motion for summary judgment filed by the Cuyahoga County Court of Common Pleas. Costs to Hughes. 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).

{¶9} Writ denied.

FRANK D. CELEBREZZE, JR., JUDGE

KATHLEEN ANN KEOUGH, P.J., and
TIM McCORMACK, J., CONCUR