

[Cite as *State ex rel. Eaves v. Cuyahoga Cty.*, 2016-Ohio-8063.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105041

**STATE OF OHIO, EX REL.
LAVELLE L. EAVES**

RELATOR

vs.

CUYAHOGA COUNTY, ET AL.

RESPONDENTS

**JUDGMENT:
WRITS DENIED**

Writs of Mandamus and Procedendo
Motion No. 501364
Order No. 501904

RELEASE DATE: December 7, 2016

FOR RELATOR

Lavelle L. Eaves, pro se
Inmate No. 310-145
North Central Correctional Complex
P.O. Box 1812
Marion, Ohio 43301

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 EILEEN KILBANE, J.:

{¶1} Lavelle L. Eaves has filed a complaint for writs of mandamus and procedendo through which he seeks orders that require Judge Matthew McMonagle and the Cuyahoga County Court of Common Pleas to: 1) issue a sentencing journal entry that complies with Crim.R. 32(C); and 2) render a ruling with regard to a pending “motion to revise/corrective judgment entry of conviction and sentence pursuant to Crim.R. 32(C) with de novo resentencing hearing requested as though sentencing had never previously occurred.”¹ Specifically, Eaves argues that he is entitled to a writ of mandamus, in *State v. Eaves*, Cuyahoga C.P. No. CR-95-321781, because the sentencing journal entry failed to dispose of two firearm specifications. In addition, Eaves argues that he is entitled to a writ of procedendo in order to compel a ruling with regard to his motion to revise/correct judgment. Judge McMonagle and the Cuyahoga County Court of Common Pleas have filed a joint amended motion for summary judgment that is granted for the following reasons.

{¶2} Initially, we find that Eaves’s complaint for a writ of mandamus is procedurally defective because he has failed to comply with R.C. 2969.25(A). Pursuant to R.C. 2969.25(A), an inmate that commences a civil action against a governmental entity or employee must file a sworn affidavit that contains a description of each civil

¹Pursuant to Civ.R. 25(D)(1), Judge Matthew McMonagle is substituted for the judge that was originally assigned to the underlying case.

action or appeal of a civil action filed in the previous five years in any state or federal court. *State ex rel. McGrath v. McDonnell*, 126 Ohio St.3d 511, 2010-Ohio-4726, 935 N.E.2d 830.

{¶3} Eaves, through his request for a writ of mandamus, argues that the sentencing journal entry, journalized on June 14, 1995, is not a final appealable order as required by Crim.R. 32(C), because the journal entry failed to dispose of the firearm specifications as attached to Counts 1 and 2. The journal entry of June 8, 1995, which memorialized Eaves’s plea of guilty to Count 1 (aggravated murder) and Count 2 (aggravated robbery) provided that “[o]n recommendation of prosecutor counts one and two are amended by deleting firearm specification.”

{¶4} The Supreme Court of Ohio has held that “[n]othing in Crim.R. 32(C) or this court’s jurisprudence requires a trial court to include as part of its sentencing entry the disposition of charges that were previously dismissed by the prosecution.” *State ex rel. Snead v. Ferenc*, 138 Ohio St.3d 136, 2014-Ohio-43, 4 N.E.3d 1013, ¶ 13. *See also State v. Rogers*, 8th Dist. Cuyahoga No. 99246, 2013-Ohio-3246.

{¶5} It must also be noted that the failure to address and sentence with regard to any specifications does not render a sentencing entry a nonfinal, nonappealable order. The failure of a trial court to address a specification constitutes a sentencing error that must be addressed upon appeal. *State v. Capp*, 8th Dist. Cuyahoga No. 102919, 2016-Ohio-295; *State v. Clark*, 8th Dist. Cuyahoga No. 101449, 2014-Ohio-5693; *State ex rel. Carter v.*

Saffold, 8th Dist. Cuyahoga No. 100322, 2013-Ohio-5596. Eaves has failed to establish that he is entitled to a writ of mandamus.

{¶6} Finally, attached to the amended motion for summary judgment is a copy of a judgment entry, journalized on December 18, 2015, that demonstrates a ruling has been rendered with regard to Eaves’s motion to revise conviction/sentence. “[R]elief is unwarranted because mandamus and procedendo will not compel the performance of a duty that has already been performed.” *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49, ¶ 4. The request for a writ of procedendo is moot. *State ex rel. Fontanella v. Kantos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220.

{¶7} Accordingly, we grant the amended joint motion for summary judgment. Costs to Eaves. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of its entry upon the journal as required by Civ.R. 58(B).

{¶8} Writs denied.

MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR