

[Cite as *State ex rel. Brown v. McCormick*, 2017-Ohio-5591.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105739

**STATE OF OHIO, EX REL.
JEFFREY BROWN**

RELATOR

vs.

JUDGE TIMOTHY McCORMICK

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 507182
Order No. 507911

RELEASE DATE: June 28, 2017

FOR RELATOR

Jeffrey Brown, pro se
Inmate No. A664-316
Richland Correctional Institution
1001 S. Olivesburg Road
Mansfield, Ohio 44905

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

KATHLEEN ANN KEOUGH, A.J.:

{¶1} Jeffrey Brown has filed a complaint for a writ of mandamus, seeking an order from this court that requires respondent Judge Timothy McCormick to comply with this court's orders in *State v. Brown*, 8th Dist. Cuyahoga Nos. 104573 (“*Brown Appeal I*”) and 105401 (“*Brown Appeal II*”), and rule on (1) the state's motion to vacate convictions and sentence, and (2) relator's oral motion to withdraw guilty plea in *State v. Brown*, Cuyahoga C.P. Nos. CR-13-580090-A and CR-13-580403-A. Respondent has moved for summary judgment on the grounds that the matter is moot as it relates to *State v. Brown*, Case No. CR-13-580090-A and that no duty exists in *State v. Brown*, Case No. CR-13-580403-A. We agree and grant respondent's unopposed motion for summary judgment.

A. Moot

{¶2} Attached to respondent's motion for summary judgment is a copy of a journal entry, filed-stamped April 16, 2017, that demonstrates respondent's full compliance with this court's remand order in *Brown Appeal I* and *Brown Appeal II*. Specifically, *Brown Appeal I* and *Brown Appeal II* involved two appeals from the same underlying criminal case — Cuyahoga C.P. Case No. CR-13-580090-A, wherein this court, on April 13, 2017, remanded the case to the trial court to rule upon Brown's oral motion to withdraw his guilty plea and the state's motion to vacate the conviction. Three days later, the trial court fully complied with the mandate and ruled on the motions. Consequently, because the trial court has fully complied with this court's remand and

mandate, Brown's request for mandamus is moot. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 658 N.E.2d 723 (1996); *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983).

{¶3} Additionally, to the extent that Brown argues that the trial court has also failed to rule upon his motions to proceed to judgment in both underlying criminal cases, respondent has produced certified journal entries belying this claim as well. Accordingly, mandamus cannot lie to compel the performance of a duty that has already been performed. *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 13.

B. No Duty Exists

{¶4} To be entitled to the writ of mandamus, Brown must establish a clear legal right to the requested relief, a clear legal duty on the part of Judge McCormick to provide it, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452.

{¶5} Contrary to Brown's assertion in his complaint, this court's mandate was limited to Case No. CR-13-580090-A; there was no remand and mandate to rule upon any oral motion to withdraw a guilty plea in Case No. CR-13-580403-A. Additionally, the state's motion to vacate conviction, which the trial court has ruled upon, was filed only in Case No. CR-13-580090-A. Brown has failed to set forth any evidence to support his claim that the trial court has failed to comply with a mandate of this court and rule upon an oral motion to withdraw his guilty plea in Case No. CR-13-580403-A. Thus, because

Brown's allegations do not demonstrate a failure by the respondent to perform a clear legal duty, mandamus is not appropriate.¹ See *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967) (recognizing that the facts submitted in support of the complaint for mandamus and the proof produced must be plain, clear, and convincing before a court is justified in using the "strong arm of the law" by way of granting a writ of mandamus).

{¶6} Accordingly, the court grants the respondent's motion for summary judgment and denies the writ. Costs assessed against relator; costs waived. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶7} Writ denied.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

TIM McCORMACK, J., and
ANITA LASTER MAYS, J., CONCUR

¹ We note that the docket in Case No. CR-13-580403-A reflects that Brown filed a written motion to withdraw his guilty plea on February 13, 2017. The state filed a brief in opposition on February 22, 2017, on the grounds that the trial court did not have jurisdiction to rule upon the motion because the underlying case was on appeal. On May 11, 2017, this court decided the issues on appeal and issued its decision in *State v. Brown*, 8th Dist. Cuyahoga No. 104575, 2017-Ohio-2757. Brown's written motion to withdraw his guilty plea, however, is not referenced or alleged in Brown's complaint for mandamus; nor does the state address this motion.