

[Cite as *Bobo v. State*, 2018-Ohio-3059.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107164

KARLOS BOBO

RELATOR

vs.

STATE OF OHIO

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 517763
Order No. 519196

RELEASE DATE: July 31, 2018

FOR RELATOR

Karlos Bobo, pro se
Inmate No. 204032
Southern Ohio Correctional Facility
P.O. Box 45699
Lucasville, Ohio 45699

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

PATRICIA ANN BLACKMON, J.:

{¶1} On May 7, 2018, the relator, Karlos Bobo, commenced this mandamus action to compel the respondent to grant his “motion to vacate and/or set aside void conviction or sentence,” which he filed on September 5, 2017, in the underlying case, *State v. Bobo*, Cuyahoga C.P. No. CR-87-223936-ZA. Bobo contends that because he was a juvenile at the subject time and because there was no bindover hearing, the trial court had no jurisdiction over his case, and his conviction and sentence are void ab initio. On May 22, 2018, the respondent, through the Cuyahoga County Prosecutor, moved for summary judgment. Attached to the dispositive motion was a journal entry, file-stamped May 10, 2018, in which the trial court denied the subject motion. Bobo never filed a response. For the following reasons, this court grants the motion for summary judgment and denies the application for a writ of mandamus.

{¶2} 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. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Furthermore, mandamus is not a substitute for appeal. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. 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). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only

when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977).

{¶3} To the extent Bobo sought a ruling on his motion to vacate, the matter is moot. The May 10, 2018 journal entry establishes that the trial court fulfilled its duty and Bobo received his requested relief, a ruling on the motion. To the extent that Bobo sought to compel the trial court to grant the motion, the claim is ill-founded. Neither the writ of mandamus nor the writ of procedendo can control judicial discretion. Bobo's proper remedy is now an appeal.

{¶4} Bobo also did not comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. This also is sufficient reason to deny the mandamus, deny indigency status, and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842; *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420; and *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378 — the defect may not be cured by subsequent filings.

{¶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.

PATRICIA ANN BLACKMON, JUDGE

TIM McCORMACK, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR
#107164 Keywords: