

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

BYRON HARRIS STATE OF OHIO
EX REL.,

:

Relator,

:

No. 108651

v.

:

JOHN D. SUTULA,

:

Respondent.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED

DATED: August 19, 2019

Writ of Mandamus
Motion No. 529705
Order No. 530433

Appearances:

Byron Harris, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and James E. Moss, Assistant Prosecuting
Attorney, *for respondent*.

LARRY A. JONES, SR., J.:

{¶ 1} Relator, Byron Harris, seeks a writ of mandamus compelling respondent, Judge John D. Sutula, to rule on Harris's "motion for resentencing pursuant to O.R.C. 2945.38[,] [d]efendant was heavily medicated," filed on

June 19, 2018. Following the filing of this action, respondent denied the motion on June 17, 2019. Therefore, the action is moot, and the request for a writ of mandamus is denied.

I. Factual and Procedural History

{¶ 2} On June 7, 2019, Harris filed a complaint for a writ of mandamus. There, he asserted that in a criminal case, *State v. Harris*, Cuyahoga C.P. No. CR-14-589543-A, he filed a motion for resentencing on June 19, 2018. Almost a year later, no ruling on that motion had been entered. Harris requested this court to issue a writ to compel respondent to rule on the motion.

{¶ 3} Respondent filed a motion for a summary judgment arguing that Harris's motion was denied on June 17, 2019. A certified copy of a journal entry denying Harris's motion was attached to the motion for summary judgment. Respondent asserted that the action is moot because Harris has already received the relief to which he is entitled in this action. Harris did not respond in opposition to respondent's motion.

II. Law and Analysis

{¶ 4} A writ of mandamus is the appropriate vehicle to prod a recalcitrant public official into action. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141, 163-164, 228 N.E.2d 631 (1967). To be entitled to a writ of mandamus, a relator must establish that "(1) the relators possess a clear legal right to the requested relief, (2) the respondents possess a clear duty to perform the requested relief, and (3) there must exist no other adequate remedy in the ordinary course of the law." *State*

ex rel. S.P. v. Cleveland, 8th Dist. Cuyahoga No. 105795, 2018-Ohio-2063, ¶ 7, citing *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987).

{¶ 5} When a complaint for a writ of mandamus asserts that a judge has failed to rule on a motion and during the pendency of the action the judge issues a ruling on the motion, the action becomes moot because “[a] writ of mandamus will not issue to compel an act already performed.” *State ex rel. Jerningham v. Court of Common Pleas*, 74 Ohio St.3d 278, 658 N.E.2d 723 (1996), citing *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983). Harris’s complaint for a writ of mandamus is moot because respondent entered an order denying Harris’s motion in the underlying action.

{¶ 6} Therefore, respondent’s motion for summary judgment is granted and the application for a writ of mandamus is denied. Costs to respondent. Costs waived. 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).

{¶ 7} Writ denied.

LARRY A. JONES, SR., JUDGE

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