[Cite as *State ex rel. Williams v. Corrigan*, 2019-Ohio-3779.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE EX REL. JOHN WILLIAMS, :

Relator, :

No. 108789

v. :

THE HONORABLE BRIAN J. CORRIGAN, :

Respondent. :

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED
DATED: September 18, 2019

Writ of Mandamus
Motion No. 530703
Order No. 531297

Appearances:

John Williams, *pro se.*

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

RAYMOND C. HEADEN, J.:

{¶ 1} Relator, John Williams, seeks a writ of mandamus directing respondent, Judge Brian J. Corrigan, to enter a final, appealable order in an underlying criminal case, *State v. Williams*, Cuyahoga C.P. No. CR-05-463504-B.

Respondent has filed a motion for summary judgment, which we grant, and deny the writ of mandamus.

Procedural and Substantive History

{¶ 2} On July 12, 2019, Williams filed a complaint for a writ of mandamus where he alleged that respondent has wrongfully denied him a final, appealable order in the underlying criminal case mentioned above. There, Williams was found guilty of four counts of aggravated murder, one count of attempted murder, three counts of aggravated robbery, three counts of kidnapping, one count of aggravated burglary, and one count of having weapons while under disability. The February 26, 2007 journal entry of sentence stated that Williams received a 43-year aggregate sentence. Of those offenses to which postrelease control applied, most required a five-year period. However, Count 15 — having weapons while under disability — was a third-degree felony, which Williams asserts is subject to a different period of postrelease control. The journal entry of sentence indicates that a five-year period of postrelease control was imposed. Williams claims that respondent failed to impose postrelease control for Count 15, and this means that all the sentences imposed in the case are void.

{¶ 3} In his complaint for a writ of mandamus, Williams alleges that on May 7, 2019, he filed a "motion for final appealable order pursuant to O.R.C. 2505.02(A), Crim.R. 32(C) and Article IV, Section 3(B)(2) to the Ohio Constitution." Williams acknowledges in his complaint that the motion was denied by respondent on May 9, 2019.

{¶ 4} Respondent timely filed a motion for summary judgment, pointing out that the complaint is defective because Williams did not include the addresses of the parties in the case caption in violation of Civ.R. 10(A),[1] his sentences are not void, and Williams is not entitled to relief in mandamus because the writ cannot be used to control judicial discretion. Williams failed to oppose respondent's motion for summary judgment.

Law and Analysis

{¶ 5} Relief in mandamus is appropriate when (1) relators show that they have a clear legal right to the requested relief, (2) that respondents are under a clear legal duty to perform the acts, and (3) relators have no plain and adequate remedy in the ordinary course of the law. *State ex rel. Natl. City Bank v. Bd. of Edn.*, 52 Ohio St.2d 81, 369 N.E.2d 1200 (1977). Mandamus may not be used to control judicial discretion. *Berthelot v. Dezso,* 86 Ohio St.3d 257, 259, 714 N.E.2d 888 (1999). Further, it cannot be used as a substitute for an appeal. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141, 156, 228 N.E.2d 631 (1967).

{¶ 6} The case is presently before this court on respondent's motion for summary judgment.

> Under Civ.R. 56(C), summary judgment is warranted if (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from

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[1] Civ.R. 10(A), applicable to original actions in the courts of appeals, requires that the addresses of the parties be listed in the caption of the complaint. Here, the addresses are not listed in the caption, but they are listed just under the caption. This technical violation of Civ.R. 10(A), in our discretion, will not result in the dismissal of the complaint. We will decide the matter on the merits.

> the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267; *State ex rel. Grady v. State Emp. Relations Bd.* (1997), 78 Ohio St.3d 181, 183, 1997-Ohio-221, 677 N.E.2d 343.

State ex rel. Trafalgar Corp. v. Miami Cty. Bd. of Commrs., 104 Ohio St.3d 350, 2004-Ohio-6406, 819 N.E.2d 1040, ¶ 19.

{¶ 7} Williams claims that there is no final, appealable order in his criminal case because the trial court improperly imposed postrelease control when it failed to impose a separate period of postrelease control on Count 15. He requests that this court direct respondent to resentence him and issue a final, appealable order in the underlying case.

{¶ 8} First, it should be noted that the Ohio Supreme Court has rejected the notion that a lack of postrelease control renders an entire sentence void and thus incapable of invoking appellate jurisdiction. *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382. "[S]o long as a timely appeal is filed from the sentence imposed, the defendant and the state may challenge any aspect of the sentence and sentencing hearing, and the appellate court is authorized to modify the sentence or remand for resentencing to fix whatever has been successfully challenged." *Id.* at ¶ 9, citing R.C. 2953.08. The court went on to note, "absent a timely appeal, res judicata generally allows only the correction of a void sanction." *Id.*, citing *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 40.

{¶ 9} Williams cites to *State ex rel. Carnail v. McCormick*, 126 Ohio St.3d 124, 2010-Ohio-2671, 931 N.E.2d 110, for the proposition that his entire sentence is void, but fails to recognize that *Fischer* overruled *Carnail's* holding that the failure to impose a necessary period of postrelease control rendered the entire sentence void. *Fischer* at ¶ 38-39; *State ex rel. Gregley v. Friedman*, 145 Ohio St.3d 279, 2014-Ohio-4796, 49 N.E.3d 264.

{¶ 10} Further, the journal entry of sentence in this case indicates that "postrelease control is part of this prison sentence for 5 years for the above felony(s) under R.C. 2967.28." The trial court imposed postrelease control sufficient to put Williams on notice that any error in its imposition should have been raised on direct appeal. This was the holding of the Ohio Supreme Court when faced with the same argument. *State ex rel. Pruitt v. Cuyahoga Cty. Court of Common Pleas*, 125 Ohio St.3d 402, 2010-Ohio-1808, 928 N.E.2d 722. There, Pruitt claimed that a judge failed to properly impose postrelease control, rendering his sentence void. The Supreme Court ruled "that the sentencing entry sufficiently included language that postrelease control was part of his sentence so as to afford him sufficient notice to raise any claimed errors on appeal rather than by extraordinary writ." *Id.* at ¶ 4. The *Pruitt* court found that as a result, relief in mandamus was not available. *Id.*

{¶ 11} Finally, appellant's argument that the sentencing entry is not a final, appealable order because a separate period of postrelease control was not imposed on Count 15 is incorrect. Only one term of postrelease control needs to and should be imposed where there are multiple, varying lengths that apply.

R.C. 2967.28(F)(4)(c); *Durain v. Sheldon*, 122 Ohio St.3d 582, 2009-Ohio-4082, 913 N.E.2d 442; *State v. Walker*, 8th Dist. Cuyahoga No. 106571, 2019-Ohio-2211, ¶ 16, citing *State v. Reed*, 2012-Ohio-5983, 983 N.E.2d 394, ¶ 12 (6th Dist.). Pursuant to R.C. 2967.28(F)(4)(c), only the longest period of postrelease control is to be imposed. The sentencing entry in the underlying case, attached to respondent's motion for summary judgment, constitutes a final, appealable order and any errors in the imposition of postrelease control should have been addressed through appeal. Appeal is therefore an adequate remedy at law, precluding relief in mandamus. *Patterson v. Ohio Adult Parole Auth.*, 120 Ohio St.3d 311, 2008-Ohio-6147, 898 N.E.2d 950.

{¶ 12} Accordingly, respondent's motion for summary judgment is granted. Relator's complaint for a writ of mandamus is denied. Relator to pay costs; 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).

{¶ 13} Writ denied.

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RAYMOND C. HEADEN, JUDGE

EILEEN T. GALLAGHER, P.J., and
LARRY A. JONES, SR., J., CONCUR