

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

ANTWAN GUNTHER,	:	PER CURIAM OPINION
Relator,	:	CASE NO. 2010-T-0010
- vs -	:	
DEPT. OF CORR. & REHAB,	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Antwan Gunther, pro se, Trumbull County Justice Center, 150 High Street, N.W., Warren, OH 44481 (Relator).

Richard Cordray, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215-3428, and *Melissa A. Montgomery*, Assistant Attorney General, Corrections Litigation Section, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Respondent).

PER CURIAM.

{¶1} Relator, Antwan Gunther, initiated the instant proceeding through the filing of a motion for the reduction of his prison term. In the text of his submission, he stated that respondent, the Ohio Department of Rehabilitation and Corrections, had a legal duty to subtract from his total term the amount of days in which he had been confined on the underlying offenses prior to his transfer to a state prison. In essence, relator

requested this court to compel respondent to calculate the amount of time he had already served, and then grant him the appropriate credit.

{¶2} Since relator did not have any other appeal or action pending before this court on the date he filed his motion, we construed his submission as a petition for a writ of mandamus. Respondent has now moved to dismiss the petition, contending that relator's submission fails to state a viable claim for any relief. Specifically, respondent maintains that any issue regarding the calculation of relator's jail-time credit cannot be litigated in the context of an original action at the appellate level because there are other legal remedies he could pursue to obtain the proper resolution on the matter.

{¶3} The governing statutory and case law on the "credit" issue clearly supports respondent's position on this matter. First, it must be noted that R.C. 2949.12 provides that the final sentencing order in a criminal case must specify "the total number of days, if any, that the felon was confined for any reason prior to conviction and sentence." In light of this express requirement, the courts of this state have consistently held that the trial court is responsible for determining the extent of a convict's jail-time credit. See, e.g., *State v. Olmstead*, 5th Dist. No. 2007-CA-119, 2008-Ohio-5884, at ¶16.

{¶4} In regard to the role of an appellate court, this court has indicated that our jurisdiction over the "credit" issue can only be invoked in one manner:

{¶5} "The Supreme Court of Ohio has expressly held that the propriety of a trial court's calculation of jail-time credit cannot be challenged in the context of a mandamus action. *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003 Ohio 2061, *** at ¶10. The basic logic for this holding is that, in raising an alleged error in the calculation of jail time, the relator will not be able to satisfy the elements for the writ

because his ability to appeal the trial court's calculation constitutes an adequate remedy at law. See *Brown v. Summit Cty. Court of Common Pleas*, 99 Ohio St.3d 409, 2003 Ohio 4126, ***; *Jones v O'Connor*, 84 Ohio St.3d 426, 1999 Ohio 470, ***. In other words, once a trial court has rendered a decision on the 'credit' issue, the correctness of that decision can only be contested in a direct appeal from the judgment in which the decision was made. See, also, *State ex rel. Stanton v. Sutula* (July 16, 1998), 8th Dist. No. 74511, 1998 Ohio App. LEXIS 3288." *State v. Scranton*, 11th Dist. No. 2005-P-0020, 2005-Ohio-2886, at ¶6.

{¶6} In the instant action, relator's submission before us never indicated that he was seeking to bring an appeal from a final judgment of the sentencing court; thus, the sole proceeding relator could file to compel respondent to act would be a mandamus case. However, pursuant to the foregoing case law, a writ of mandamus can never lie in relation to this specific subject matter because a criminal defendant will always have an adequate legal remedy through the appropriate proceedings before the trial court and a direct appeal of the final calculation to this court. In other words, any question as to the calculation of relator's credit cannot be addressed in a mandamus proceeding because: (1) this court does not have the authority to make the initial determination; and (2) we can only review the calculation in the context of a direct appeal.

{¶7} As part of his motion/petition, relator also requested this court to consider whether he should be allowed to serve his sentence in an alternative program or halfway house. As to this point, this court would again indicate that the trial court is the only tribunal which has the authority to make the initial determination on this type of issue. As with the "credit" issue, any question as to whether relator should be placed in

an alternative facility cannot be litigated in a mandamus action because he has an adequate remedy through a direct appeal of the trial court's determination.

{¶8} Even when relator's factual assertions are interpreted in a manner most favorable to him, the nature of those assertions are still such that he will never be able to prove a set of facts under which he would not have an adequate remedy at law. As a result, the dismissal of this action is warranted under Civ.R. 12(B)(6) because relator's factual assertions are legally insufficient to satisfy all elements for a writ of mandamus.

{¶9} Pursuant to the foregoing analysis, respondent's motion to dismiss the instant matter is granted. It is the order of this court that relator's motion to reduce his prison term, construed as a petition in mandamus, is hereby dismissed in its entirety.

MARY JANE TRAPP, P.J., CYNTHIA WESTCOTT RICE, J., TIMOTHY P. CANNON, J.,
concur.