

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

STATE OF OHIO ex rel. LEROY JACKSON,	:	PER CURIAM OPINION
Relator,	:	CASE NO. 2009-A-0049
- VS -	:	
HON. JUDGE GARY L. YOST, ASHTABULA COUNTY COURT OF COMMON PLEAS,	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Leroy Jackson, PID: #441-433, Richland Correctional Institution, P.O. Box 8107, Mansfield, OH 44901 (Relator).

Thomas L. Sartini, Ashtabula County Prosecutor, and *Rebecca K. Divoky*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Respondent).

PER CURIAM.

{¶1} This mandamus action is presently before this court for final disposition of the motion to dismiss of respondent, Judge Gary L. Yost of the Ashtabula County Court of Common Pleas. As the sole basis for his motion, respondent submits that the merits of this action have been rendered moot because he has performed the specific act that

relator, Leroy Jackson, sought to compel. For the following reasons, we conclude that the motion to dismiss has merit.

{¶2} In maintaining the instant action, relator requested the issuance of a writ to compel respondent to vacate his prior judgment of June 4, 2008, and then render a new sentencing judgment in an underlying criminal proceeding. In asserting that the June 2008 judgment was not enforceable, relator first claimed in his mandamus petition that the prior judgment was legally deficient because it had improperly stated that he would be subject to five years of post release control following the completion of his ten-year prison term. According to relator, he could have only been subject to one to three years of post release control. Second, his mandamus petition alleged that the prior judgment did not constitute a final appealable order because it failed to satisfy all requirements for finality under Crim.R. 32(C).

{¶3} Instead of submitting an answer to relator's petition, respondent moved to dismiss this action for failure to state a viable claim under Civ.R. 12(B)(6). After relator had responded to the first motion to dismiss, this court issued a judgment entry in which we essentially concluded that relator was only entitled to proceed on one aspect of his petition. Concerning the "post release control" aspect, our entry reviewed the governing statutes and held that the imposition of a five-year period had been warranted in light of the nature of the offenses for which relator had been convicted. Based upon this, our entry stated that relator's own factual allegations could only be construed to demonstrate that respondent had not committed any sentencing error which would render the June 2008 judgment void.

{¶4} However, as to the "finality" aspect of the mandamus petition, we held that

relator's allegations were sufficient to state a viable claim for the writ. Specifically, this court indicated that a review of the June 2008 judgment tended to show that respondent had not stated the manner in which relator had been convicted of the ten offenses, as is expressly required under Crim.R. 32(C). The analysis in our entry further indicated that, pursuant to well-established Supreme Court precedent, a writ of mandamus could lie to compel a trial judge to issue a new sentencing judgment when a prior judgment is not sufficient to enable the criminal defendant to pursue a direct appeal.

{¶5} In now moving to dismiss for a second time, respondent submits that it is no longer necessary to proceed with this action because the second aspect of relator's petition has become moot. Respondent asserts that, following the issuance of our prior entry on his first motion to dismiss, he released a new sentencing judgment which fully complied with all four requirements of Crim.R. 32(C). In support of his assertion, he has attached to his present motion a time-stamped copy of a written judgment entered in the underlying criminal case on July 19, 2010.

{¶6} Despite the fact that respondent's motion to dismiss has been pending in this matter for over thirty days, relator has not filed any objection or response.

{¶7} As this court has noted on numerous occasions, the sole purpose of a writ of mandamus is to compel a public official to perform a specific act which he is legally obligated to do. See, e.g., *State ex rel. Verbanik v. Bernard*, 11th Dist. No. 2006-T-0080, 2007-Ohio-1786, at ¶6. We have further stated that if the public official completes the disputed act during the pendency of the mandamus case, the substance of the claim will be deemed moot and the matter will be dismissed. *Id.* at ¶7. In addition, we have held that, for purposes of an original action, a finding of mootness can be predicated on

the failure of the relator to challenge the respondent's motion to dismiss. Id. at ¶8.

{¶8} In the instant proceeding, our review of the new sentencing judgment, as attached to the second motion to dismiss, shows that it contains a statement indicating that relator's underlying conviction was based upon his entry of a guilty plea. Given that relator has not contested the authenticity of this new judgment, it is apparent that respondent has now rendered a proper final judgment from which a direct appeal could be taken. As a result, the second aspect of relator's mandamus petition has become moot. Moreover, since this court expressly held in our prior entry that the first aspect of the petition did not state a viable claim for the writ, the dismissal of this entire matter is justified.

{¶9} Consistent with the foregoing discussion, respondent's motion to dismiss is granted. It is the order of this court that relator's entire petition in mandamus is hereby dismissed.

MARY JANE TRAPP, P.J., DIANE V. GRENDALL, J., COLLEEN MARY O'TOOLE J.,
concur.