

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

STATE OF OHIO ex rel. RICHARD A. CLARK,	:	PER CURIAM OPINION
	:	
Relator,	:	CASE NO. 2018-T-0062
- vs -	:	
HONORABLE RONALD J. RICE, et al.,	:	
Respondents.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Richard A. Clark, pro se, PID: A644-389, Marion Correctional Institution, P.O. Box 57, 940 Marion-Williamsport Rd., Marion, OH 43302 (Relator).

Dennis Watkins, Trumbull County Prosecutor, and *Ashleigh Musick*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Respondents).

PER CURIAM.

{¶1} This matter is before this court on the July 13, 2018 petition for a writ of mandamus filed by relator, Richard A. Clark. Relator is once again seeking to vacate his conviction in Trumbull County Court of Common Pleas Case No. 2013 CR 225, claiming the trial court did not have jurisdiction. For the reasons stated, we dismiss relator’s petition.

{¶2} Relator was indicted by the Trumbull County Grand Jury in April 2013. The indictment charged him with aggravated murder, aggravated robbery, and possession of heroin. Relator pleaded not guilty. The state, with the court's permission, dismissed the possession of heroin charge.

{¶3} Following a jury trial in September 2013, relator was convicted of aggravated murder and aggravated robbery, both first-degree felonies. He was sentenced to life without the possibility of parole for the aggravated murder and a consecutive sentence of 10 years for the aggravated robbery. This court affirmed his convictions in his direct appeal. *State v. Clark*, 11th Dist. Trumbull No. 2013-T-0106, 2014-Ohio-5704.

{¶4} In July 2017, relator filed a pro se motion to vacate his convictions alleging they are void because the trial court lacked jurisdiction since there was never a properly filed criminal complaint setting forth the charges against him before his case was bound over from the municipal court to the Trumbull County Court of Common Pleas. Relator did not challenge the validity of his indictment, but maintained the trial court lacked jurisdiction due to a lack of a criminal complaint.

{¶5} The trial court denied relator's motion to vacate and he appealed. In March 2018, this court affirmed, determining that a properly filed indictment issued by a grand jury is sufficient to invoke subject matter jurisdiction in the court of common pleas. *State v. Clark*, 11th Dist. Trumbull No. 2017-T-0081, 2018-Ohio-794. In June 2018, the Ohio Supreme Court declined jurisdiction. *State v. Clark*, 152 Ohio St.3d 1492, 2018-Ohio-2155.

{¶6} On July 13, 2018, relator filed a mandamus petition and is once again seeking vacation of his conviction. Respondents, Honorable Ronald J. Rice and Dennis Watkins, Trumbull County Prosecutor, filed a motion to dismiss on July 23, 2018. Relator filed a memorandum contra on August 24, 2018.

{¶7} “A motion to dismiss for failure to state a claim upon which relief can be granted is procedural in nature and tests the sufficiency of the complaint.’ *Huffman v. Willoughby*, 11th Dist. No. 2007-L-040, 2007-Ohio-7120, ¶16, citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 * * * (1992). Under Civ.R. 12(B)(6), ‘the factual allegations and all reasonable inferences in a complaint must be accepted as true and viewed in a light most favorable to the plaintiff. In order to dismiss a complaint under Civ.R. 12 or to enter judgment on the pleadings, a court must be convinced, based solely on the allegations in the complaint, that the plaintiff can prove no set of facts entitling him to recovery.’ (Citation omitted.) *State ex rel. Simeone v. Niles*, 11th Dist. No. 2008-T-0059, 2008-Ohio-7000, ¶18.” *Johns v. Allen*, 11th Dist. Trumbull No. 2013-T-0007, 2013-Ohio-2045, ¶7.

{¶8} R.C. 2731.01 states: “Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.”

{¶9} “To be entitled to a writ of mandamus, the relator must be able to prove that: (1) he has a clear legal right to have a specific act performed by a public official; (2) the public official has a corresponding duty to perform that act; and (3) there is no other legal remedy that could be pursued to adequately resolve the matter.” *State ex*

rel. Sanders v. Enlow, 11th Dist. Portage No. 2010-P-0022, 2010-Ohio-5053, ¶14, citing *State ex rel. Appenzeller v. Mitrovich*, 11th Dist. Lake No. 2007-L-125, 2007-Ohio-6157, ¶5.

{¶10} As stated, this court has already reviewed and rejected relator’s claim, determining that a properly filed indictment issued by a grand jury is sufficient to invoke subject matter jurisdiction in the court of common pleas, and the Ohio Supreme Court has declined jurisdiction. *Clark*, 2018-Ohio-794; *Clark*, 2018-Ohio-2155. Relator had an adequate remedy in the ordinary course of law through the appellate process. This court’s prior decision in *Clark*, 2018-Ohio-794, prohibits respondents from taking the action relator seeks under the law of the case doctrine. *See State ex rel. Non-Employees of Chateau Estate Resident Assn. v. Kessler*, 107 Ohio St.3d 197, 2005-Ohio-6182, ¶14. Relator is not entitled to a writ of mandamus in this case.

{¶11} Accordingly, it is the order of this court that relator’s mandamus petition is hereby dismissed.

DIANE V. GRENDALL, J., TIMOTHY P. CANNON, J., COLLEEN MARY O’TOOLE, J.,
concur.