

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

STATE OF OHIO ex rel. JOSEPH A. SANDS,	:	PER CURIAM OPINION
	:	
Relator,	:	CASE NO. 2020-L-041
	:	
- vs -	:	
	:	
CHARLES E. COULSON, PROSECUTING ATTORNEY,	:	
	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Joseph A. Sands, pro se, PID# A664-601, Marion Correctional Institution, 940 Marion-Williamsport Road, P.O. Box 57, Marion, OH 43302 (Relator).

Charles E. Coulson, Lake County Prosecutor, and *Michael L. DeLeone*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (Respondent).

PER CURIAM

{¶1} Pending before this court is relator, Joseph A. Sands', petition for Writ of Mandamus, filed on March 23, 2020, and respondent, Lake County Prosecuting Attorney Charles E. Coulson's, Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, filed on April 6, 2020. Sands filed a Reply Memorandum on May 13, 2020.

{¶2} Sands seeks a writ commanding Prosecuting Attorney Coulson to dismiss his Judgment of Conviction in Lake County Common Pleas Case No. 06CR000401 as

void on the grounds that it was obtained by perjured testimony. See Writ of Mandamus at ¶ 10: “The **Relator** requests this Court to insure [issue ?] this Writ of Mandamus against the **Respondent** by **ordering** the **respondent** to dismiss this Judgment of Conviction on Case No. 06-CR-401 as VOID based on the facts * * * no conviction can stand on (known to the **Respondent**) * * * perjured testimony of the State’s only key witness.”

{¶3} Prosecuting Attorney Coulson seeks the dismissal of the petition, inter alia, for failure to state a claim upon which relief may be granted pursuant to Civil Rule 12(B)(6).

{¶4} “[D]ismissal of a mandamus complaint under Civ.R. 12(B)(6) * * * is appropriate only if it ‘appear[s] beyond doubt from the complaint that the relator can prove no set of facts warranting relief, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in the relator’s favor.’” *State ex rel. Peoples v. Schneider*, __ Ohio St.3d __, 2020-Ohio-1071, __ N.E.3d __, ¶ 6, citing *State ex rel. Zander v. Judge of Summit Cty. Common Pleas Court*, 156 Ohio St.3d 466, 2019-Ohio-1704, 129 N.E.3d 401, ¶ 4.

{¶5} “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.” R.C. 2731.01. “In order to grant a writ of mandamus, a court must find that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that relator has no plain and adequate remedy at law. ” *State ex rel. Westchester Estates, Inc. v. Bacon*, 61 Ohio St.2d 42, 399 N.E.2d 81 (1980), paragraph one of the syllabus.

{¶6} Sands has failed to demonstrate that Prosecutor Coulson is under a clear legal duty to dismiss Sands' conviction. Sands has cited no authority, and this court is not aware of any, for the proposition that a prosecutor has the ability to vacate criminal convictions.

{¶7} Respondent's Motion to Dismiss is granted and the petition is hereby dismissed.

THOMAS R. WRIGHT, J., MATT LYNCH, J., MARY JANE TRAPP, J., concur.