

[Cite as *State ex rel. Black v. DeWeese*, 2010-Ohio-942.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE, EX. REL.
JAMES D. BLACK

Relator

-vs-

HONORABLE JAMES DEWEESE

Respondent

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 09CA140

OPINION

CHARACTER OF PROCEEDING:

Petition for Writ of Mandamus

JUDGMENT:

Writ Denied

DATE OF JUDGMENT ENTRY:

March 9, 2010

APPEARANCES:

For Petitioner:

JAMES D. BLACK - #553-121
Marion Correctional Institution
P. O. Box 57
Marion, OH 44301

For Respondent:

Kirsten L. Pscholka-Gartner
Assistant County Prosecutor
Richland County Prosecutor's Office
38 South Park Street, 2nd Floor
Richland, Ohio 44902

Delaney, J.

{¶1} Relator, James Black, has filed a petition requesting the issuance of a writ of mandamus to compel Respondent, Richland County Court of Common Pleas Judge James Deweese, to correct an alleged error in the calculation of jail time credit that the Relator was to receive.

{¶2} Respondent has filed a motion to dismiss claiming the issue is moot, as Respondent issued a ruling on December 7, 2009, denying Relator's motion to correct jail time credit, which was pending before the trial court. Respondent also submits that Relator has an adequate remedy at law as Relator can seek a timely direct appeal to this Court of the December 7, 2009 ruling. Relator responds the issue is not moot because Respondent has denied the correction to the jail time credit and Respondent has a legal duty to correctly calculate Relator's jail time credit.

{¶3} To be entitled to the issuance of a writ of mandamus, the Relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41, 324 N.E.2d 641, citing *State ex rel. National City Bank v. Bd of Education* (1977) 520 Ohio St.2d 81, 369 N.E.2d 1200.

{¶4} The Supreme Court has held, "[A defendant has] an adequate remedy at law by appeal to raise any error by the trial court in calculating his jail-time credit. *State ex rel. Brown v. Summit Cty. Court of Common Pleas*, 99 Ohio St.3d 409, 2003-Ohio-

4126, 792 N.E.2d 1123, ¶ 4.” *State ex rel. Rudolph v. Horton*, 119 Ohio St.3d 350, 351, 894 N.E.2d 49, 50 (Ohio,2008).

{¶5} Because Relator has or had an adequate remedy at law to challenge his jail time credit, a writ will not issue. The instant Petition for Writ of Mandamus is denied.

{¶6} WRIT DENIED.

{¶7} COSTS TO RELATOR.

{¶8} IT IS SO ORDERED.

By Delaney, J.

Farmer, P.J. and

Wise, J. concur

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JOHN W. WISE

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JUDGMENT ENTRY

Case No. 09CA140

For the reasons stated in our accompanying Memorandum-Opinion, the Petition for Writ of Mandamus is denied. Costs taxed to Relator.

IT IS SO ORDERED.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JOHN W. WISE