[Cite as *State v. Ware*, 2020-Ohio-3542.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. KIMANI E. WARE Appellant	C.A. No. 29133 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 03 11 3491

DECISION AND JOURNAL ENTRY

Dated: June 30, 2020

TEODOSIO, Presiding Judge.

{¶1} Appellant, Kimani E. Ware, appeals from the trial court's order denying his motions for access to public records and court records. This Court affirms.

I.

{¶2} We previously set forth the underlying facts and procedural posture of this case as follows:

> On November 18, 2003, Appellant was indicted on nine criminal counts stemming from the attempted murder of his then-girlfriend, the kidnapping of her four children, and the rape of her then twelve-year-old daughter. Following a two day jury trial, Appellant was found guilty of one count of attempted murder, in violation of R.C. 2923.02 and R.C. 2903.02(A); two counts of kidnapping, in violation of R.C. 2905.01(B)(2); one count of kidnapping, in violation of R.C. 2905.01(A)(4); two counts of rape, in violation of R.C. 2907.02(A)(1)(b); one count of gross sexual imposition, in violation of R.C. 2907.05(A)(4); one count of attempted rape, in violation of R.C. 2923.02 and R.C. 2907.02(A)(1)(b); and one count of felonious assault, in violation of R.C. 2903.11(A)(2).
>
> On June 25, 2004 Appellant was sentenced to three concurrent ten year terms of imprisonment for his kidnapping convictions. He was also sentenced to ten years imprisonment for his conviction of attempted murder; five years imprisonment for

> his conviction of attempted rape; and two life sentences for each conviction of rape. Appellant's three concurrent terms for kidnapping were to run first and consecutively to his terms for the remaining crimes. As stated, Appellant is not eligible for parole until the year 2048, when he will have served forty-five years of his sentence.

State v. Ware, 9th Dist. Summit No. 22232, 2005-Ohio-1822, ¶ 2-3. Mr. Ware appealed the sentence imposed by the trial court, and this Court affirmed. *Id.* at ¶ 1. He later filed various other motions in the trial court which were all denied, including a motion for access to public records pursuant to R.C. 149.43(G), and a motion for access to court records pursuant to Sup.R. 44 through 47.

{¶3} Mr. Ware now appeals from the trial court's order denying his motions for access to public records and court records, raising two assignments of error for this Court's review. We have consolidated his assignments of error because they involve the same analysis.

II.

ASSIGNMENT OF ERROR ONE

> THE TRIAL COURT ERRED WHEN DENIED (SIC) APPELLANT'S MOTION FOR ACCESS TO PUBLIC RECORDS UNDER R.C. 149.43(G)

ASSIGNMENT OF ERROR TWO

> THE TRIAL COURT ABUSED IT'S (SIC) DECRETION (SIC) WHEN IT DENIED APPELLANT'S MOTION FOR TO (SIC) COURT RECORDS PURSUANT TO RULES OF SUPERINTENDENCE 44 THROUGH 47.

{¶4} In his assignments of error, Mr. Ware argues that the trial court erred in denying his motions for public records and court records.

{¶5} The Supreme Court of Ohio has recently clarified that Sup.R. 44 through 47 only apply to case documents in cases commenced *on or after July 1, 2009*. *State ex rel. Parker Bey v. Byrd*, Slip Opinion No. 2020-Ohio-2766, ¶ 11-12. *See also* Sup.R. 47(A)(1). As Mr. Ware's underlying criminal case commenced prior to July 1, 2009, an action to compel the production of

documents from that case must therefore be brought under the Public Records Act, not the Rules of Superintendence. *See id.* Thus, while Mr. Ware properly sought certain documents through the Public Records Act, i.e., R.C. 149.43, he improperly sought other records pursuant to Sup.R. 44 through 47.

{¶6} Nevertheless, if Mr. Ware was aggrieved by the failure of the police department and the prosecutor to promptly prepare these records and make them available to him upon request, his remedy would lie in mandamus, not in a direct appeal to this Court. *See State ex rel. Cincinnati Enquirer v. Cincinnati*, 157 Ohio St.3d 290, 2019-Ohio-3876, ¶ 6 ("Mandamus is *the* appropriate remedy by which to compel compliance with Ohio's Public Records Act, R.C. 149.43." (Emphasis added.)); R.C. 149.43(C)(1)(b); *but see* R.C. 149.43(C)(1)(a) (permitting the aggrieved party to file a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code, instead of commencing a mandamus action); *State ex rel. McDougald v. Greene*, Slip Opinion No. 2020-Ohio-2782, ¶ 6 ("Mandamus is *an* appropriate remedy by which to compel compliance with Ohio's Public Records Act, R.C. 149.43." (Emphasis added.)); *contra Henderson v. Vivo*, 7th Dist. Mahoning No. 19 MA 0053, 2020-Ohio-698, ¶ 18 (determining relator's mandamus petition was precluded because he did not first appeal the trial court's denial of his public records request).

{¶7} Accordingly, Mr. Ware's assignments of error are both overruled.

III.

{¶8} Mr. Ware's first and second assignments of error are both overruled. The judgment of the Summit Count Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

THOMAS A. TEODOSIO
FOR THE COURT

CALLAHAN, J.
CONCURS.

CARR, J.
CONCURRING IN JUDGMENT ONLY.

{¶9} Although R.C. 149.43(G) provides that a defendant's request for public records in a criminal action shall be treated as a demand for discovery under certain circumstances, that is certainly not the case in a post-conviction setting. Here, it was improper for Ware to seek relief under R.C. 149.43 by filing a post-judgment motion in his *closed* criminal case. I agree with the majority that the Ohio Rules of Superintendence are inapplicable to this matter.

APPEARANCES:

KIMANI E. WARE, pro se, Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO GUEST, Assistant Prosecuting Attorney, for Appellee.