



Hon. Mary DeGenaro

Dated: July 25, 2005

Per Curiam:

{¶1} Petition for Writ of Mandamus was filed with this Court on May 26, 2005 seeking a writ to compel Respondent Judge Maureen Cronin to rule on certain pending motions pertaining to post-conviction relief and summary judgment. Pro se Relator Raymond Martinez references motions which he filed on February 22, 2005 and March 30, 2005 seeking post-conviction relief from his underlying conviction.

{¶2} In response to an order from this Court granting Respondent time to file an answer or otherwise plead, on June 09, 2005, Respondent filed a motion to dismiss, asserting that the petition was moot. Respondent argues that an April 9, 2005 judgment entry denying the motion for post-conviction relief as being untimely renders the petition moot. The judgment indicated that Relator had filed his petition well in excess of 180 days from the date the transcripts of proceedings were filed.

{¶3} In order for a court to issue a writ of mandamus, a Relator must demonstrate "1) that he has a clear legal right to the relief prayed for, 2) that Respondents are under a clear legal duty to perform the acts, and 3) that Relator has no plain and adequate remedy in the ordinary course of the law." *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41, 42. In this case, Relator is not entitled to the extraordinary writ of mandamus since he has an available legal remedy to appeal the judgment of Respondent denying his motion for post-conviction relief. Moreover, such

ruling provides the relief prayed for in the petition and the writ of mandamus will not issue to compel an act already performed. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 278.

{¶4} Based on the above, we conclude that the motion to dismiss is meritorious and this petition for writ of mandamus is dismissed as moot. Costs of this proceeding taxed against Relator.

{¶5} Final order. Clerk to serve a copy on counsel of record and Relator pursuant to the Civil Rules.

Donofrio, P.J., concurs.

Waite, P., concurs.

DeGenaro, P., concurs.