

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
ERIE COUNTY

State of Ohio, ex rel. Anthony Muscioni

Court of Appeals No. E-17-018

Relator

v.

Judge Roger Binette, et al.

**DECISION AND JUDGMENT**

Respondent

Decided: April 24, 2017

\* \* \* \* \*

Anthony Muscioni, pro se.

\* \* \* \* \*

**SINGER, J.**

{¶ 1} This matter is before the court on the petition of relator, Anthony Muscioni, who requests that the court issue a writ of mandamus pursuant to R.C. Chapter 2731 ordering respondent, Hon. Roger Binette, judge of the Erie County Court of Common Pleas, to rule on relator’s motion for jail time credit filed November 14, 2016, and supplemented on January 19, 2017. Relator asserts that he is entitled to have credit for

pretrial confinement applied against “all his terms of imprisonment” in accordance with R.C. 2967.191.

{¶ 2} An application for a writ of mandamus may be sua sponte dismissed on its face if it fails to state a claim upon which relief can be granted. *State ex rel. Kreps v. Christiansen*, 88 Ohio St.3d 313, 316, 725 N.E.2d 663 (2000). A writ of mandamus cannot be issued if the relator has an adequate remedy in the ordinary course of law. R.C. 2731.05; *State ex rel. Hummel v. Sadler*, 96 Ohio St.3d 84, 2002-Ohio-3605, 771 N.E.2d 853, ¶ 21.

{¶ 3} A challenge as to whether the trial court properly classified a defendant’s time in jail as days to be credited against his sentence must be raised on direct appeal from the sentencing judgment or the issue is barred under the doctrine of res judicata. *State v. Davis*, 6th Dist. No. WD-10-053, 2011-Ohio-149, ¶ 5. Therefore, an application for a writ of mandamus is not the appropriate remedy. *State ex rel. Ford v. Gallagher*, 8th Dist. Cuyahoga No. 96231, 2011-Ohio-746, ¶ 4; *State ex rel. Harrington v. Russo*, 8th Dist. Cuyahoga No. 94867, 2010-Ohio-1765, ¶ 3.

{¶ 4} Therefore, we sua sponte dismiss relator’s petition. Costs are assessed against relator. The clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ denied.

Arlene Singer, J.

Thomas J. Osowik, J.

James D. Jensen, P.J.  
CONCUR.

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JUDGE

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JUDGE

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JUDGE