[Cite as *State ex rel. Allen v. Goulding*, 2018-Ohio-1821.]

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

State of Ohio, ex rel. Ronald S. Allen, Jr. — Court of Appeals No. L-18-1075

Relator

v.

Judge Michael Goulding — **DECISION AND JUDGMENT**

Respondent — Decided: May 3, 2018

* * * * *

Ronald S. Allen, Jr., pro se.

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for respondent.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This matter is before the court on relator's, Ronald Allen, Jr., petition for a writ of mandamus to compel respondent, Hon. Michael Goulding, to issue a corrected ruling on relator's motion for a final appealable order. Effectively, relator seeks a full resentencing hearing on his 1997 conviction for murder. Because relator cannot demonstrate a clear legal right to the requested relief based on the facts alleged, we sua sponte dismiss his petition.

{¶ 2} A writ of mandamus is an extraordinary remedy. Generally, to be entitled to a writ of mandamus, a relator must establish (1) a clear legal right to the relief requested, (2) a clear legal duty to perform the requested act on the part of the respondent, and (3) that the relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Manson v. Morris*, 66 Ohio St.3d 440, 441, 613 N.E.2d 232 (1993). "Sua sponte dismissal without notice is warranted when a complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint." *State ex rel. Cincinnati Enquirer v. Ronan*, 124 Ohio St.3d 17, 2009-Ohio-5947, 918 N.E.2d 515, ¶ 3.

{¶ 3} In 1997, relator was convicted by a jury of the offense of murder. Relator was sentenced to 15 years to life in prison. Relator filed a direct appeal from his conviction, which was affirmed. In 2011, relator moved to have his judgment entry of conviction corrected to comply with Crim.R. 32(C) and *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. In addition, relator challenged the imposition of postrelease control. On March 11, 2011, the trial court granted relator's motion, in part, and corrected the sentencing entry to specify the manner of conviction—in this case, that relator was convicted by a jury. The trial court denied relator's motion as it related to the imposition of postrelease control because although the original sentencing entry stated that relator was given notification of postrelease control, postrelease control was correctly not imposed as it does not apply to the unspecified felony of murder. Thus, the court found that any mention of notification of postrelease control in the original sentencing entry was superfluous.

{¶ 4} Relator appealed the March 11, 2011 judgment entry. Prior to hearing the appeal, we remanded the matter to the trial court, finding that the judgment entry still did not comply with the requirements of Crim.R. 32(C) and *Baker*. On August 24, 2011, the trial court entered a corrected nunc pro tunc entry. In the corrected entry, the trial court stated that "On August 23, 2011 defendant's sentencing hearing was held pursuant to R.C. 2929.19." The entry further stated that relator and his attorney were present at the hearing. Ultimately, we affirmed the trial court's August 24, 2011 judgment.

{¶ 5} Since then, relator has filed numerous actions seeking to vacate his conviction, which have been denied by the trial court and affirmed by our court on appeal.

{¶ 6} In this original action, relator now appears to be challenging the trial court's August 24, 2011 judgment entry on the grounds that a nunc pro tunc entry was not the proper avenue to correct a Crim.R. 32(C) and *Baker* deficiency, and that the entry contained a falsehood because he was not present for resentencing on August 23, 2011.

{¶ 7} Regarding the former, *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, recognized that a nunc pro tunc entry was effective to correct a sentencing entry to indicate the manner of conviction. Further, the Ohio Supreme Court held, "A nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken." *Id.* at paragraph two of the syllabus. Thus, relator's first argument is without merit.

{¶ 8} Turning to his second argument, that the August 24, 2011 judgment entry contained a falsehood, we agree with relator that the August 24, 2011 nunc pro tunc entry was incorrect in that relator was not present for resentencing. It is apparent to us that the August 24, 2011 judgment entry mistakenly stated that the sentencing hearing was on August 23, 2011, instead of the original sentencing hearing date of October 31, 1997. Nevertheless, we find that relator has suffered no prejudice and is not entitled to any form of relief for that simple scrivener's error because, as stated in *Lester*, relator was not entitled to a new resentencing hearing to correct the judgment entry to comply with Crim.R. 32(C) and *Baker*. Therefore, relator's second argument is without merit.

{¶ 9} Accordingly, because relator obviously is not entitled to a writ of mandamus on the facts alleged in the petition, we hereby dismiss relator's petition for a writ of mandamus at relator's costs. The clerk is directed to serve upon the parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ denied.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Christine E. Mayle, P.J. _____
CONCUR.
JUDGE