

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

State of Ohio, ex rel. Kyle W. Blanton

Court of Appeals No. OT-12-001

Relator

v.

Judge Bruce Winters

DECISION AND JUDGMENT

Respondent

Decided: March 6, 2012

* * * * *

Kyle W. Blanton, pro se.

* * * * *

HANDWORK, J.

{¶ 1} This original action is before the court upon the complaint filed by relator, Kyle W. Blanton, for a writ of mandamus directing Hon. Bruce Winters, judge of the Ottawa County Court of Common Pleas, to cease unlawful exercise of jurisdiction in this case. Relator has also filed a motion for leave to amend the complaint.

{¶ 2} On May 8, 2011, relator was charged in Ottawa Municipal Court case No. CRB 1100307, with one count of violating R.C. 2903.13(A), assault, and was released on his own recognizance. On August 22, 2011, the municipal court granted the motion of the state of Ohio for leave to dismiss the criminal complaint in case No. CRB 1100307A pursuant to Crim.R. 48(A) so that the case could be submitted to the Ottawa County Grand Jury. Relator asserts that he was not present in open court that day when this decision was made. When he came to the court, he was informed by the prosecutor that the case had been dismissed. Thereafter, an indictment was issued on August 29, 2011, charging relator with a different violation (Ottawa County Court of Common Pleas case No. 11CR1021), and that case is still pending before Judge Winters.

{¶ 3} Relator appealed the dismissal of the first case to this court (6th Dist. No. OT-11-030). On November 29, 2011, this court dismissed the appeal on the ground that the order from which the appeal was taken was not a final, appealable order. Relator sought a further appeal to the Ohio Supreme Court on January 11, 2012.

{¶ 4} Relator argues that the August 22, 2011 order was invalid because the motion was not resolved in open court as required by Crim.R. 48(A). He also asserts that Judge Winters refused to sua sponte dismiss the second case and denied relator's motion to dismiss the case on jurisdictional grounds. Relator asserts that because the first case was dismissed by the state of Ohio in violation of Crim.R. 48(A) and R.C. 2941.33, which require this action to be taken in open court, the trial court did not have jurisdiction to determine the subsequent criminal action. Furthermore, relator contends that Judge

Winters lacked jurisdiction to proceed in the second case pending appeal of the judgment in the first case.

{¶ 5} Relator now seeks that “no summons on indictment be issued and no incarceration of relator be ordered related to said indictment or further bond conditions, special or not be imposed by respondent or magistrates in said court.”

{¶ 6} A writ of mandamus is an extraordinary writ and, therefore, is only available where the court finds “that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that relator has no plain and adequate remedy at law.” *State ex rel. Middletown Bd. of Edn. v. Butler Cty. Budget Comm.*, 31 Ohio St.3d 251, 253, 510 N.E.2d 383 (1987) quoting *State ex rel. Westchester Estates, Inc. v. Bacon*, 61 Ohio St.2d 42, 399 N.E.2d 81 (1980), paragraph one of the syllabus. Furthermore, a writ of mandamus can only be issued to command “the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” R.C. 2731.01.

{¶ 7} In the case before us, appellant does not contend that Judge Winters has refused to perform a duty imposed upon him by law. Rather, relator seeks a writ to prevent Judge Winters from proceeding in a matter where he would exercise jurisdiction outside the jurisdiction granted to him by law. Since relator does not seek the relief that a writ of mandamus would provide, we must dismiss this original action.

{¶ 8} Furthermore, the trial court in this case has original subject matter jurisdiction over the felony criminal action. R.C. 2931.03. The trial court had subject-

matter jurisdiction over the particular criminal matter and personal jurisdiction over relator pursuant to the indictment, which is valid on its face. Therefore, any error in assuming jurisdiction could be addressed on appeal from the conviction and sentencing judgment. Because relator has an adequate remedy at law, an extraordinary writ is not warranted.

{¶ 9} Relator’s request for a writ of mandamus is denied and this original action is dismissed. Relator is ordered to pay the costs of this action. 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.