SLIP OPINION NO. 2011-OHIO-5516

THE STATE EX REL. MARTIN, APPELLANT, *v.* RUSSO, JUDGE, APPELLEE.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Martin v. Russo,* Slip Opinion No. 2011-Ohio-5516.]

Mandamus will not issue when relator has an adequate remedy in the ordinary course of law—Court of appeals judgment denying claim for writ of mandamus affirmed.

(No. 2011-1223—Submitted October 18, 2011—Decided November 1, 2011.)

APPEAL from the Court of Appeals for Cuyahoga County,
No. 96328, 2011-Ohio-3268.

Per Curiam.

{¶ 1} We affirm the judgment of the court of appeals denying the claim of appellant, Tramaine Martin, for a writ of mandamus to compel appellee, Cuyahoga County Court of Common Pleas Judge Michael J. Russo, to vacate his sentence in a criminal case and resentence him.

{¶ 2} As the court of appeals correctly held, Martin's claims of sentencing error, including his allied-offense claim, are not cognizable in an action for an extraordinary writ, because he has an adequate remedy by appeal to raise these claims. See *State ex rel. Voleck v. Powhatan Point*, 127 Ohio St.3d 299, 2010-Ohio-5679, 939 N.E.2d 819, ¶ 7 ("Mandamus will not issue when the relators have an adequate remedy in the ordinary course of law"); *State ex rel. Cotton v. Russo*, 125 Ohio St.3d 449, 2010-Ohio-2111, 928 N.E.2d 1092, ¶ 1 (affirming denial of writs of mandamus and procedendo because insofar as relator attempted to raise claims of sentencing error, he had an adequate remedy by appeal to raise them); cf. *Smith v. Voorhies*, 119 Ohio St.3d 345, 2008-Ohio-4479, 894 N.E.2d 44, ¶ 10 ("allied-offense claims are nonjurisdictional and are not cognizable in habeas corpus").

{¶ 3} Moreover, res judicata bars Martin from raising the same claims he raised in his appeal. *State ex rel. Brown v. Wauford*, 129 Ohio St.3d 17, 2011-Ohio-2858, 949 N.E.2d 999, ¶ 2; see *State v. Martin*, Cuyahoga App. No. 95281, 2011-Ohio-222. "Mandamus is not a substitute for an unsuccessful appeal." *State ex rel. Marshall v. Glavas*, 98 Ohio St.3d 297, 2003-Ohio-857, 784 N.E.2d 97, ¶ 6.

{¶ 4} Based on the foregoing, we affirm the judgment of the court of appeals.

Judgment affirmed.

O'CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O'DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.

Tramaine Martin, pro se.

William D. Mason, Cuyahoga County Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, for appellee.
