

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Nelson v. Russo*, Slip Opinion No. 2011-Ohio-6552.]

NOTICE

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SLIP OPINION NO. 2011-OHIO-6552

THE STATE EX REL. NELSON, APPELLANT, v. RUSSO, JUDGE, APPELLEE.

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may be cited as *State ex rel. Nelson v. Russo*,

Slip Opinion No. 2011-Ohio-6552.]

Appellant had adequate remedy by way of appeal to raise claim of sentencing error—Court of appeals’ judgment denying request for writ of mandamus affirmed.

(No. 2011-1438—Submitted December 7, 2011—Decided December 22, 2011.)

APPEAL from the Court of Appeals for Cuyahoga County,

No. 96706, 2011-Ohio-3698.

Per Curiam.

{¶ 1} We affirm the judgment of the court of appeals denying the request of appellant, Carl A. Nelson Sr., for a writ of mandamus to compel appellee, Cuyahoga County Court of Common Pleas Judge Nancy M. Russo, to correct an alleged clerical error in his sentencing entry so that his sentences for four counts of rape and one count of kidnapping run concurrently rather than consecutively.

SUPREME COURT OF OHIO

{¶ 2} Nelson had an adequate remedy by way of appeal to raise his claim of sentencing error. *State ex rel. Gooden v. Teodosio*, 128 Ohio St.3d 538, 2011-Ohio-1915, 947 N.E.2d 1206, ¶ 3. And because Nelson has already raised his claim of sentencing error, see *State v. Nelson*, Cuyahoga App. No. 95420, 2010-Ohio-6032, res judicata bars him from using mandamus to relitigate the same issue. See *State ex rel. McDonald v. Mitrovich*, 113 Ohio St.3d 167, 2007-Ohio-1258, 863 N.E.2d 172, ¶ 8. Nor can Nelson raise any asserted constitutional claim that he could have raised in his prior appeal. *Smith v. Voorhies*, 119 Ohio St.3d 345, 2008-Ohio-4479, 894 N.E.2d 44, ¶ 11.

Judgment affirmed.

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

Carl A. Nelson Sr., pro se.

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