

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Bevins v. Cooper*, Slip Opinion No. 2016-Ohio-5578.]

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SLIP OPINION NO. 2016-OHIO-5578

THE STATE EX REL. BEVINS, APPELLANT, v. COOPER, JUDGE, APPELLEE.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Bevins v. Cooper*, Slip Opinion No. 2016-Ohio-5578.]

Mandamus—Adequate remedy at law—Dismissal of writ seeking final, appealable order affirmed.

(No. 2015-1615—Submitted May 3, 2016—Decided August 31, 2016.)

APPEAL from the Court of Appeals for Hamilton County, No. C-150507.

Per Curiam.

{¶ 1} We affirm the First District Court of Appeals’ dismissal of the petition for a writ of mandamus filed by appellant, Andrew Bevins Jr. Bevins seeks a writ ordering the trial judge who declared a mistrial in his criminal case to issue a final, appealable order journalizing the decision to declare a mistrial. The court of appeals correctly dismissed the petition.

SUPREME COURT OF OHIO

{¶ 2} Bevins was charged with and eventually convicted of aggravated burglary and rape. *State v. Bevins*, 1st Dist. Hamilton, No. C-050754, 2006-Ohio-6974, ¶ 1 (affirming Bevins’s convictions on direct appeal but remanding for resentencing). The convictions were the result of a 2005 trial, following a 2003 mistrial. *State ex rel. Bevins v. Cooper*, 138 Ohio St.3d 275, 2014-Ohio-544, 6 N.E.3d 33, ¶ 2 (affirming the First District’s dismissal of a petition seeking a writ of mandamus ordering Bevins’s immediate release or a new trial). Respondent, Judge Ethna M. Cooper, presided over the mistrial and the retrial.

{¶ 3} On August 19, 2015, Judge Cooper issued an order denying Bevins’s “Motion to Issue a Final Appealable Order and to Vacate a Void Judgment.” Bevins filed his petition for a writ of mandamus in the First District Court of Appeals on August 31. That court granted Judge Cooper’s motion to dismiss the petition on September 16. On October 2, Bevins appealed that decision to this court.

{¶ 4} To be entitled to a writ of mandamus, Bevins must establish a clear legal right to the requested relief, a clear legal duty on the part of Judge Cooper to provide it, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6.

{¶ 5} The court of appeals was correct in dismissing Bevins’s petition. Bevins could have appealed Judge Cooper’s denial of his motion for a final, appealable order, and thus he had available an adequate remedy in the ordinary course of the law. *State ex rel. Ward v. Reed*, 141 Ohio St.3d 50, 2014-Ohio-4512, 21 N.E.3d 303, ¶ 12 (“An appeal is an adequate remedy in the ordinary course of law that precludes an action for mandamus or procedendo”), citing *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 250, 673 N.E.2d 1281 (1997), and *State ex rel. Sevayega v. McMonagle*, 122 Ohio St.3d 54, 2009-Ohio-

2367, 907 N.E.2d 1180, ¶ 1. We therefore affirm the judgment of the court of appeals.

Judgment affirmed.

O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, KENNEDY, FRENCH, and O'NEILL, JJ., concur.

Andrew Bevins Jr., pro se.

Joseph T. Deters, Hamilton County Prosecuting Attorney, and Scott M. Heenan, Assistant Prosecuting Attorney, for appellee.
