

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Mitchell v. Pittman*, Slip Opinion No. 2023-Ohio-3114.]

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SLIP OPINION NO. 2023-OHIO-3114

THE STATE EX REL. MITCHELL, APPELLANT, v. PITTMAN, JUDGE, APPELLEE.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Mitchell v. Pittman*, Slip Opinion No. 2023-Ohio-3114.]

Mandamus—Appellant had adequate remedy in ordinary course of law to seek issuance of a final, appealable order resolving original charges—Appellant had adequate remedy in ordinary course of law by way of direct appeal to argue that indicted charges were improperly substituted—Court of appeals’ judgment affirmed.

(No. 2023-0051—Submitted June 27, 2023—Decided September 7, 2023.)

APPEAL from the Court of Appeals for Portage County, No. 2022-P-0044,
2022-Ohio-4466.

Per Curiam.

{¶ 1} Appellant, James E. Mitchell, filed a complaint for a writ of mandamus in the Eleventh District Court of Appeals against appellee, Judge Laurie

J. Pittman of the Portage County Court of Common Pleas (the “trial court”). Mitchell sought an order requiring the trial court to issue a final, appealable order regarding two criminal convictions from 1993. The Eleventh District granted the trial court’s motion to dismiss, and Mitchell now appeals. We affirm the Eleventh District’s judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} Mitchell’s complaint states that he is currently incarcerated at the Marion Correctional Institution. It further states that in 1993, he was indicted in Portage County for rape and aggravated burglary and that he pleaded guilty to the lesser offenses of gross sexual imposition and burglary. Mitchell was sentenced to 3 to 15 years in prison. His convictions were affirmed on direct appeal. *State v. Mitchell*, 11th Dist. Portage No. 94-P-0070, 1995 WL 411830 (June 23, 1995).

{¶ 3} In August 2022, Mitchell filed his complaint for a writ of mandamus in the Eleventh District, alleging that because there is no entry that disposes of the original charges of rape and aggravated burglary, no final, appealable order has been issued. He sought a writ of mandamus ordering the trial court “to dispose of the indicted charges and provide [him] a final appealable order that complies with Crim.R. 32(C).”

{¶ 4} The trial court filed a Civ.R. 12(B)(6) motion to dismiss Mitchell’s complaint, which the Eleventh District granted. Mitchell appeals to this court as of right.

II. LEGAL ANALYSIS

{¶ 5} We review de novo a decision granting a motion to dismiss under Civ.R. 12(B)(6). *Alford v. Collins-McGregor Operating Co.*, 152 Ohio St.3d 303, 2018-Ohio-8, 95 N.E.3d 382, ¶ 10. We construe all allegations in the complaint as true, and to affirm a dismissal, it must appear beyond doubt that the relator can prove no set of facts that would entitle the relator to relief. *Id.*

{¶ 6} To be entitled to a writ of mandamus, Mitchell must establish by clear and convincing evidence that (1) he has a clear legal right to the requested relief, (2) the trial court has a clear legal duty to provide it, and (3) he lacks an adequate remedy in the ordinary course of the law. *See State ex rel. Love v. O’Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3.

{¶ 7} Mitchell argues that the trial court is required to issue a final, appealable order resolving his original charges of rape and aggravated burglary. Mitchell, however, had an adequate remedy in the ordinary course of the law; he could have filed a motion in the trial court for a final, appealable order and then appealed any adverse ruling on the motion. Such a remedy constitutes an adequate remedy in the ordinary course of the law. *See State ex rel. Haynie v. Rudduck*, 160 Ohio St.3d 99, 2020-Ohio-2912, 153 N.E.3d 91, ¶ 13 (“because Haynie could have appealed Judge Rudduck’s order denying his motion for a final, appealable order, he had an adequate remedy in the ordinary course of law that precludes extraordinary relief in mandamus”); *State ex rel. Bevins v. Cooper*, 150 Ohio St.3d 22, 2016-Ohio-5578, 78 N.E.3d 828, ¶ 5.

{¶ 8} In addition, to the extent that Mitchell is arguing that the indicted charges of rape and aggravated burglary were improperly substituted with charges of gross sexual imposition and burglary, Mitchell could have argued this on direct appeal of his convictions. *See State ex rel. Mitchell v. Pittman*, 169 Ohio St.3d 357, 2022-Ohio-2542, 204 N.E.3d 534, ¶ 11, 13. Such an opportunity constitutes an adequate remedy in the ordinary course of the law. *See id.* at ¶ 13.

III. CONCLUSION

{¶ 9} Because Mitchell had an adequate remedy in the ordinary course of the law, he is not entitled to relief in mandamus. We therefore affirm the Eleventh District Court of Appeals’ judgment dismissing Mitchell’s complaint.

Judgment affirmed.

SUPREME COURT OF OHIO

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, BRUNNER,
and DETERS, JJ., concur.

James E. Mitchell, pro se.

Victor V. Vigluicci, Portage County Prosecuting Attorney, and Theresa M.
Scahill, Assistant Prosecuting Attorney, for appellee.
