

ORIGINAL

**IN THE
SUPREME COURT OF OHIO**

**STATE OF OHIO, EX REL.,
JAMES E. WOMACK**

Relator-Appellant

vs.

**MELBA D. MARSH, JUDGE,
HAMILTON COUNTY COURT OF
COMMON PLEAS**

Respondent-Appellee

NO. 2010-1157

On Appeal from the Hamilton County
Court of Appeals, First Appellate
District

Court of Appeals
Case Number C-100287

MERIT BRIEF OF RESPONDENT-APPELLEE

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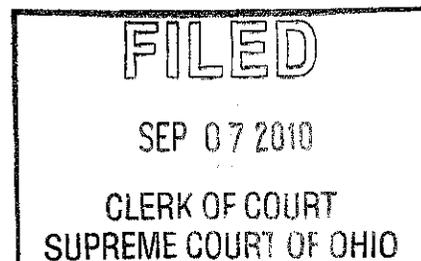
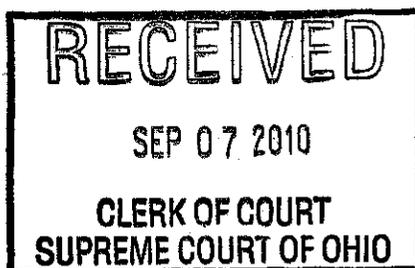


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TABLE OF AUTHORITIES

CASES

State ex rel. Keenan v. Calabrese (1994), 69 Ohio St. 3d 176, 631 N.E.2d 229

STATEMENT OF FACTS

In May of 2006, a jury found Relator-Appellant James Womack guilty of four counts of Robbery for robbing four different banks in Downtown Cincinnati during January of 2005. On June 13, 2006, the trial court sentenced Womack to an aggregate sentence of twenty years incarceration. The First District Court of Appeals affirmed the conviction under case number C-060542 on May 9, 2007. In October of 2007 the Ohio Supreme Court denied jurisdiction under case number 2007-1095. In June of 2008, Womack filed a post-conviction petition and it was denied in December of 2008. In June of 2009, Womack filed an "Application for Re-opening for Re-sentencing pursuant to Foster" and it was denied.

In December of 2009, Womack filed an "Application for Reopening for Resentencing Pursuant to Ohio Revised Code 2967.28(B)(3)." On May 7, 2010, the trial court denied the application but acknowledged that, as Womack was obviously well-aware, the mandatory period of post-release control is three years as opposed to five years. Womack filed a timely notice of appeal in the First District Court of Appeals under case number C-1000343 from the trial court's denial of his application and the matter is awaiting briefing. Prior to the May 7, 2010 denial of the application, Womack had filed a petition for writ of mandamus in the First District Court of Appeals under case number C-100287 seeking a ruling on his application. On June 9, 2010, the petition for writ of mandamus was dismissed by the First District Court of Appeals. The matter is on appeal to this Court from the dismissal of the petition for writ of mandamus pursuant to S.Ct. Prac. R. 2.1(A)(1) as a cause that originated in the court of appeals.

ARGUMENT

Proposition of Law No. 1: The writ of mandamus is not a substitute for an appeal.

Womack is appealing the dismissal of his petition for writ of mandamus in an effort to appeal his term of post-release control. A writ of mandamus will only be granted where the following requirements are met: (1) Relator has a clear legal right to the relief requested; (2) Respondent has a clear legal duty to perform the requested act; and (3) Relator has no plain and adequate remedy at law. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St. 3d 176, 631 N.E.2d 229. In this case, Womack does in fact have a plain and adequate remedy at law in that he has actually appealed the denial of his "Application for Reopening for Resentencing Pursuant to Ohio Revised Code 2967.28(B)(3)" to the First District Court of Appeals under case number C-1000343.

CONCLUSION

The First District Court of Appeals' entry dismissing the petition for Writ of Mandamus should be affirmed.

Respectfully,

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PROOF OF SERVICE

I hereby certify that I have sent a copy of the foregoing Merit Brief of Respondent-Appellee, by United States mail, addressed to James E. Womack (#526-178), London Correctional Institution, P.O. Box 69, London, OH 43140-0069, this 3rd day of September, 2010.



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