ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel.
MICHAEL SCHECK

Relator-Appellant

vs.

JUDGE CHRISTOPHER J. COLLIER

Respondent-Appellee

Case No. 10-1569

On Appeal From The Court of Appeals for Medina County, Ninth Appellate District, Case No. 09-CA-0081-M

ON APPEAL FROM AN ORIGINAL ACTION IN MANDAMUS

NOTICE OF APPEAL

BY RELATOR-APPELLANT MICHAEL SCHECK

RECEIVED
SEP 07 2010
CLERK OF COURT
SUPREME COURT OF OHIO

COUNSEL FOR APPELLANT

MICHAEL SCHECK
Post Office Box 644
Westfield Center
Ohio 44251

Appellant Pro se

COUNSEL FOR APPELLEE

DEAN HOLMAN
Medina County Prosecutor
72 Public Square
Medina, Ohio 44256

FILED
SEP 07 2010
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE

Michael Scheck, herein Appellant, respectfully gives notice of his intention to appeal the decision of the Ninth District Court of Appeals, entered on August 2, 2010, in Case Number 09-CA-0081-M, wherein the Appellate Court denied his Original Action in Mandamum.

Appellant submits that this case originated in the Appellate Court, involves felony convictions, and raises substantial constitutional questions regarding the proper manner of correcting a void sentence, final appealable orders and issues related to jurisdiction.

Respectfully submitted

MICHAEL SCHECK
Post Office Box 644
Westfield Center
Ohio 44251

Appellant Pro se

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Notice of Appeal has been sent, via regular U.S. mail, to counsel for Appellee, DEAN HOLMAN, Medina County Prosecutor, at 72 Public Square Medina, Ohio 44256, on this 30th day of August, 2010.

By: _____

MICHAEL SCHECK
Post Office Box 644
Westfield Center
Ohio 44251

Appellant Pro se

COPY

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

COURT OF APPEALS
10 AUG -2 AM 11:55

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

FILED
MEDINA COUNTY
CLERK OF COURTS

STATE OF OHIO ex rel. MICHAEL SCHECK

Relator

v.

JUDGE CHRISTOPHER J. COLLIER

Respondent

C.A. No. 09CA0081-M

JOURNAL ENTRY

Relator, Michael Scheck, filed a complaint seeking a Writ of Mandamus to order Respondent, Judge Christopher Collier of the Medina County Court of Common Pleas, to hold a new sentencing hearing, followed by issuing a new sentencing journal entry. Judge Collier moved to dismiss or, in the alternative, for summary judgment. For the following reasons, this Court dismisses the complaint.

Background

According to the complaint, Scheck was convicted of rape and kidnapping following a jury trial. The original sentencing entry did not reflect the means of conviction, stating that the trial court "finds that the defendant has been convicted of * * *" rape and kidnapping. The original entry also contained an improper postrelease control notification.

Scheck moved the trial court to correct the entry. In response, Judge Collier issued a nunc pro tunc entry. The nunc pro tunc entry restated everything included in the first entry, but it properly set forth the postrelease control sanction.

Scheck then filed this action. He has petitioned for a writ of mandamus to order Judge Collier to conduct a new sentencing hearing, followed by a new sentencing entry.

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Writ of Mandamus

"For a writ of mandamus to issue, a relator must demonstrate that (1) the relator has a clear legal right to the relief prayed for, (2) respondent is under a corresponding clear legal duty to perform the requested acts, and (3) relator has no plain and adequate legal remedy." *State ex rel. Serv. Emp. Internatl. Union, Dist. 925 v. State Emp. Relations Bd.* (1998), 81 Ohio St.3d 173, 176. Based on the facts alleged in the complaint, Scheck cannot demonstrate that he has a clear legal right to the relief requested or that Judge Collier has a clear legal duty to perform the requested act.

Scheck seeks a writ of mandamus from this Court to order Judge Collier to hold a new sentencing hearing, after which Judge Collier would issue a new sentencing entry, to correct the original entry's Crim.R. 32(C) deficiency. The Supreme Court has held that a defendant is not entitled to a new sentencing hearing to fix this problem. "The remedy for a failure to comply with Crim.R. 32(C) is a revised sentencing entry rather than a new hearing." *State ex rel. Alicea v. Krichbaum*, Slip Opinion No. 2010-Ohio-3234, ¶2. Scheck does not have a clear legal right to a new sentencing hearing. Judge Collier does not have a corresponding clear legal duty to provide Scheck with a new sentencing hearing. Accordingly, Scheck is not entitled to a writ of mandamus.

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Conclusion

The petition is dismissed. Costs taxed to Relator.

The clerk of courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. See Civ.R. 58(B).

Judge

Concur:
Carr, J.
Belfance, J.