ORIGINAL

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO, ex rel.
JOHN JOSEPH RINALDI,

Relator,

vs.

JUDGE V. LEE SINCLAIR,
STARK COUNTY COURT of
COMMON PLEAS,

Respondent.

CASE NO. 2011-0888

ORIGINAL ACTION
WRIT OF MANDAMUS

MOTION TO DISMISS OF RESPONDENT, JUDGE V. LEE SINCLAIR of STARK COUNTY COURT OF COMMON PLEAS

JOHN D. FERRERO,
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

By: RENEE M. WATSON
Ohio Sup. Ct. Reg. No. 0072906
Assistant Prosecuting Attorney
110 Central Plaza, South
Suite 510
Canton, Ohio 44702-1413
(330) 451-7897
FAX: (330) 451-7965

Counsel of Record for Respondent

JOHN JOSEPH RINALDI
Inmate No. 532-682
Belmont Correctional Institution
68518 Bannock Road
P.O. Box 540
St. Clairsville, Ohio 43950-0540

Relator *pro se*

RECEIVED
MAY 31 2011
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
MAY 31 2011
CLERK OF COURT
SUPREME COURT OF OHIO

MOTION TO DISMISS COMPLAINT FOR WRIT OF PROHIBITION

Relator, John Joseph Rinaldi, has file an original action with this Court seeking the issuance of a writ of mandamus against Respondent, Judge V. Lee Sinclair of the Stark County Court of Common Pleas. This claim is identical to a claim Rinaldi filed on January 31, 2011, Case No. 2011-0190 which was dismissed on April 20, 2011. Rinaldi has failed to state a claim upon which relief can be granted, especially given the ambiguous nature of the allegations contained in the complaint for the writ of mandamus.

As he did in January, Rinaldi again claims in his complaint that he has been denied his constitutional right to a delayed appeal from his conviction and sentence. Rinaldi, however, did file a motion for leave to file a delayed appeal with the appropriate appellate court – the Court of Appeals for Stark County (Fifth Appellate District) – which was denied by the court of appeals. Rinaldi did not appeal that ruling of the appellate court or seek reconsideration. Instead, he is now seeking a writ of mandamus from this Court to order the trial judge, and not the court of appeals, to allow him to file a delayed appeal.

The writ should be denied on two grounds: first, the issue is res judicata; and second, the trial judge, respondent herein, has no jurisdiction over a motion for delayed appeal per App. R. 5(A). The complaint in mandamus should accordingly be dismissed.

In the underlying criminal case – *State of Ohio v. John Joseph Rinaldi*, Stark County Court of Common Pleas Case No. 2007-CR-0845 – Rinaldi was charged with the criminal offenses of rape [R.C. 2907.02(A)(1)(b)] and sexual battery [R.C. 2907.03(A)(5)]. Instead of standing trial, Rinaldi pled guilty to the charges, and was sentenced to an aggregate prison term

of eight years.[1] The judgment entry of conviction and sentence was filed August 31, 2007.

On August 16, 2010, Rinaldi filed a notice of appeal and a motion for leave to file a delayed appeal pursuant to App. R. 5(A). The court of appeals denied the delayed appeal by judgment entry, filed September 17, 2010. *State v. Rinaldi*, Stark App. No. 2010-CA-00227. Rinaldi did not seek reconsideration of this ruling by the appellate court, and did not appeal that ruling to this Court. Instead, Rinaldi filed a petition for post-conviction relief on January 5, 2011, which was dismissed two days later by the trial court. Rinaldi has not appealed this ruling of the trial court.

Instead, Rinaldi now twice seeks from this Court the extraordinary writ of mandamus to order the trial judge to allow his delayed appeal.

To be entitled to the writ, Rinaldi must establish a clear legal right to the requested relief (a delayed appeal), a corresponding clear legal duty on the part of Judge Sinclair to provide that relief (allow or grant the delayed appeal), and the lack of an adequate remedy in the ordinary course of the law.[2] Rinaldi has failed to meet these requirements.

Delayed appeals are provided for and governed by appellate rule. The applicable appellate rule stipulates that leave to file and pursue a delayed appeal from a criminal proceeding is vested with the court of appeals; it is not vested with the trial court. The rule specifically sets forth:

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[1]The trial court imposed a sentence of 8 years for the rape charge, and a concurrent 5-year term for the sexual battery charge.

[2]See, e.g., *Turner v. Eberlin*, 117 Ohio St.3d 381, 2008-Ohio-1117, 884 N.E.2d 39, ¶ 6.

(A) **Motion by defendant for delayed appeal.**

(1) After the expiration of the thirty day period provided by App. R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases:

(a) Criminal proceedings;
(b) Delinquency proceedings; and
(c) Serious youthful offender proceedings.

(2) A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and shall file a copy of the notice of the appeal in the court of appeals. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.

App. R. 5(A).

While Rinaldi has a clear legal right to file for leave to pursue a delayed appeal, he has no clear legal right to have that appeal granted. Thus, he has failed to satisfy the first prong of the mandamus test.

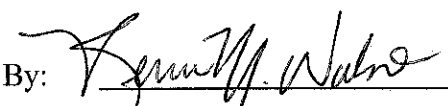
In addition, Judge Sinclair has no legal obligation to grant a delayed appeal. It is the court of appeals and not the trial court that has the exclusive authority over delayed appeals in criminal cases.

And finally, Rinaldi had an adequate legal remedy in the ordinary course of the law. Rinaldi in fact did file a motion for leave to file a delayed appeal, which was denied by the court of appeals. Rinaldi did not seek reconsideration of that ruling of the appellate court, or seek to

appeal that ruling to his Court. His failure to take advantage of these remedies does not create an avenue of relief for him to pursue yet another delayed appeal through yet another writ of mandamus.

Therefore, Rinaldi has again failed to satisfy any of the requirements for the extraordinary relief of a mandamus writ. As a result, this Court should dismiss the complaint and deny Rinaldi the relief he seeks.

JOHN D. FERRERO,
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

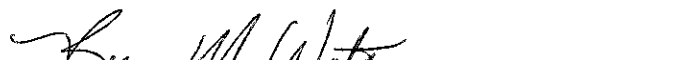
By: 

RENEE M. WATSON
Ohio Sup. Ct. Reg. No. 0072906
Assistant Prosecuting Attorney
110 Central Plaza, South
Suite 510
Canton, Ohio 44702-1413
(330) 451-7897
FAX: (330) 451-7965

Counsel of Record for Respondent

PROOF OF SERVICE

A copy of the foregoing MOTION TO DISMISS [ORIGINAL ACTION – WRIT OF MANDAMUS] was sent by ordinary U.S. mail this 27th day of May, 2011, to JOHN JOSEPH RINALDI, at Inmate No. 532-682, Belmont Correctional Institution, 68518 Bannock Road, P.O. Box 540, St. Clairsville, Ohio 43950-0540.



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