

IN THE SUPREME COURT OF OHIO

<p>TERRY E. CANNON</p> <p>Relator</p> <p>v.</p> <p>RICHARD K. WARREN</p> <p>Respondent</p>	<p>CASE NO. 13-1943</p> <p>Original Action in Prohibition</p> <p>RESPONDENT'S MOTION TO DISMISS</p>
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RICHARD K. WARREN

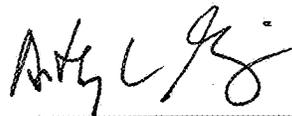
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RELATOR

RECEIVED
DEC 27 2013
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
DEC 27 2013
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SUPREME COURT OF OHIO

Respondent Richard K. Warren moves this court for an order dismissing this case, pursuant to S.Ct.Prac.R.12.04(A)(1). A memorandum in support of this motion is set forth below.



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MEMORANDUM

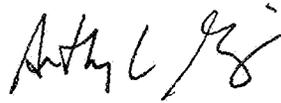
Relator seeks to obtain a Writ of Prohibition to vacate a portion of his sentence in a criminal case. As can be seen from the Court of Appeals decision below, Relator was convicted on a guilty plea to several counts of drug trafficking and sentenced on May 27, 2010. The sentence included certain provisions regarding restitution. Relator did not file a direct appeal of the trial court's judgment entry of sentence. Instead, Relator filed a Motion to Vacate Sentence in the trial court. The trial court determined the motion to be a post-conviction petition and it was overruled. Relator appealed. The court of appeal denied Relator's appeal, finding the trial court did not err in treating the motion as a post-conviction petition and overruling it, and that Relator's motion was untimely filed.

Relator attempted to then appeal to this court, but the filing was rejected as being untimely. Relator now seeks redress of the same sentencing issue raised below through the filing for this

Writ of Prohibition.

This court can take judicial notice that Respondent Richard K. Warren is no longer a judge of the Allen County Common Pleas Court, having retired from that position on December 31, 2012. Therefore, Respondent Warren is not in a position to take any judicial action for which this court could issue a Writ of Prohibition against him.

Secondly, Relator has both failed to appeal the initial sentence, and all appeal efforts regarding his "Motion to Vacate" have been unsuccessful. A similar attempt to challenge a criminal sentence through a Writ of Prohibition was recently summarily rejected by this court. See *Lenard v. Russo*, 133 Ohio St. 3d 152 (Ohio 2012) (*per curiam*). The same rationale in *Lenard* applies to this case, and this case should be summarily dismissed.

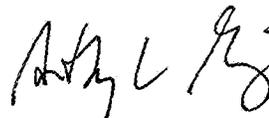


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CERTIFICATE OF SERVICE

This is to certify that a copy of this document was served upon the following by regular U.S. mail on December 26, 2013.

Terry E. Cannon, 629-147
P.O. Box 1812
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Anthony L. Geiger