

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE ex rel.	:	PER CURIAM OPINION
WILLIAM E. LEMON, JR.,	:	CASE NO. 2010-T-0064
Relator,	:	
- VS -	:	
JUDGE THOMAS A. CAMPBELL,	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

William E. Lemons, Jr., PID: 564-642, Belmont Correctional Institution, P.O. Box 540, St. Clairsville, OH 43950 (Relator).

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Respondent).

PER CURIAM.

{¶1} The instant proceeding in mandamus is presently before this court for final consideration of the motion to dismiss of respondent, Judge Thomas A. Campbell of the Trumbull County Court, Central Division. As the sole basis for the motion, he contends that it is unnecessary to review the actual substance of the mandamus claim because he has already performed the basic act which relator, William E. Lemons, Jr., sought to compel. For the following reasons, we conclude that the dismissal of relator's claim for

relief is justified because it is moot.

{¶2} Relator is presently incarcerated in an Ohio state prison, based upon his prior criminal conviction in the Trumbull County Court of Common Pleas. In bringing the instant original action, relator requested the issuance of a writ to require respondent to enter a judgment of dismissal in a separate criminal case pending before the Trumbull County Court. According to relator's mandamus petition, the dismissal was warranted because the state of Ohio had failed to bring him to trial on the underlying theft charge within the time requirements of R.C. 2941.401. His petition also alleged that, although he had filed a motion to dismiss in the separate criminal case, respondent had not gone forward on the matter and rendered a specific ruling on the motion.

{¶3} In now moving to dismiss the mandamus petition, respondent asserts that the substance of relator's sole claim is already moot because, prior to the institution of this original action, he issued a new judgment which expressly dismissed the pending criminal proceeding. In support of his assertion, respondent has attached to his motion a certified copy of a judgment rendered in the Trumbull County Court on March 8, 2010. A review of the certified judgment verifies that the underlying theft charge is no longer pending against relator, and that the criminal case has been concluded. However, our review further shows that the judgment contains no reference to relator's "speedy trial" motion, and that respondent's decision to dismiss was predicated upon the state's own motion for such relief.

{¶4} Despite the fact that this court has afforded relator ample time in which to respond to the motion to dismiss the mandamus claim, he has failed to do so. Thus, not only has no challenge been raised regarding the authenticity of the cited judgment, but

relator has not contested respondent's assertion that he has already done the basic act which the mandamus claim was intended to compel.

{¶5} In applying the “mootness” doctrine in the context of a mandamus action, this court has stated:

{¶6} “As a general proposition, the basic purpose of a writ of mandamus is to compel a public official to perform an act which he has a legal duty to complete. Therefore, if the public official has already done the very act which is the subject of a mandamus action, the official is entitled to have the action dismissed because the merits of the mandamus claim are considered moot. *State ex rel. Donlin v. Hubbard Twp.*, 11th Dist. No. 2003-T-0035, 2004-Ohio-1708. Furthermore, this court has indicated that, although it would usually be inappropriate to consider evidentiary materials in ruling on a motion to dismiss under Civ.R. 12(B)(6), such materials can be reviewed when the basis of the dismissal motion is mootness. *State ex rel. Robinson v. McKay*, 11th Dist. No. 2001-T-0125, 2002-Ohio-630.” *Penko v. Mitrovich*, 11th Dist. No. 2003-L-191, 2004-Ohio-6326, at ¶5.

{¶7} As part of his prayer for relief in the instant original action, relator sought a writ which would essentially compel respondent to dismiss the underlying criminal case that had been pending in the Trumbull County Court since early 2009. In rendering his judgment of March 8, 2010, respondent did just that; i.e., he dismissed the theft charge against relator, thereby terminating the criminal proceeding. Accordingly, to the extent that respondent's sole evidentiary item demonstrates that he has already performed the basic official act referenced by relator in the mandamus claim, the merits of the instant matter are moot because a writ of mandamus will not lie to compel the performance of

an act which has already been completed.

{¶8} In relation to that aspect of relator's petition in which he asserted that the dismissal of the criminal case should have been based upon the state's failure to bring him to trial in a timely manner, this court would again note that respondent's March 8, 2010 judgment never addressed relator's pending "speedy trial" motion. In considering similar situations in which a trial judge has issued the final decision in a matter without disposing of all pending motions, the courts of this state have concluded that it must be presumed that the judge intended to overrule those other motions. See, e.g., *State v. Kramer*, 11th Dist. No. 2006-P-0055, 2007-Ohio-467; *State v. Chandler*, 10th Dist. No. 07AP-269, 2007-Ohio-5579. Under the logic of this precedent, the fact that respondent granted the state's motion to dismiss supports the inference that he also meant to deny relator's separate motion to dismiss.

{¶9} As to the propriety of respondent's decision to not predicate the dismissal of the criminal case upon relator's "speedy trial" argument, this court would emphasize that a mandamus proceeding cannot be employed as a means of reviewing the merits of a particular determination. Specifically, in describing the legitimate uses of such an action, we have indicated that the writ will not lie to control the outcome of a trial judge's legal analysis. See *Cunningham v. Lucci*, 11th Dist. No. 2006-L-052, 2006-Ohio-4666, at ¶11. Stated differently, "although a writ of mandamus can lie to compel a judge to render a judgment on a matter, it cannot be used to control the discretion of a judge and dictate a specific ruling upon a pending matter." *Penko*, 2004-Ohio-6326, at ¶8. Along the same lines, we have stated that a criminal defendant cannot re-litigate the merits of a trial judge's ruling in a mandamus action because he has an adequate legal remedy

through the institution of a timely direct appeal or a delayed appeal under App.R. 5(A). *Cunningham*, 2006-Ohio-4666, at ¶12.

{¶10} Under the undisputed facts of the instant case, respondent has already made a determination which had the effect of dismissing the entire underlying criminal action. Pursuant to the foregoing case law, if relator concludes that respondent's ruling was not predicated upon the correct reasoning, there is an alternative remedy he could pursue to challenge the propriety of the underlying decision. To this extent, there is no set of facts under which relator would be entitled to additional relief under his sole mandamus claim.

{¶11} Since the merits of this original action are moot, respondent's motion to dismiss is granted. It is the order of this court that relator's entire mandamus petition is hereby dismissed.

CYNTHIA WESTCOTT RICE, J., COLLEEN MARY O'TOOLE, J., TIMOTHY P. CANNON, J., concur.