

[Cite as *State ex rel. Rhodes v. Tobin, Judge*, 2001-Ohio-3183.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

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|---------------------|---|---------------------|
| STATE EX REL. |) | |
| JAMES V. RHODES, |) | |
| |) | |
| RELATOR, |) | CASE NO. 2001-CO-25 |
| |) | |
| - VS - |) | OPINION |
| |) | AND |
| JUDGE DAVID TOBIN, |) | JOURNAL ENTRY |
| COLUMBIANA COUNTY |) | |
| COMMON PLEAS COURT, |) | |
| |) | |
| RESPONDENT. |) | |

CHARACTER OF PROCEEDINGS: Petition for Writ of Mandamus

JUDGMENT: Petition Dismissed

APPEARANCES:

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|--------------|------------------------------|
| For Relator: | James V. Rhodes, Pro Se |
| | #388-123 |
| | Mansfield Correctional Inst. |
| | P.O. Box 788 |
| | Mansfield, Ohio 44901 |

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|-----------------|------------------------------|
| For Respondent: | Attorney Robert L. Herron |
| | Columbiana County Prosecutor |
| | Columbiana County Courthouse |
| | Lisbon, Ohio 44432 |

JUDGES:

Hon. Joseph J. Vukovich

Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: August 29, 2001

PER CURIAM.

{¶1} On June 22, 2001, Pro Se Relator filed a Petition for Writ of Mandamus seeking an order from this Court to command Respondent to correct Relator's sentence in Common Pleas Court case number 99-CR-321.

{¶2} For a Writ of Mandamus to be granted, the Relator must demonstrate: (1) that Relator has no plain and adequate remedy in the ordinary course of law; (2) that Respondent is under a clear legal duty to perform some act or acts; and (3) that Relator has a clear legal right to the relief prayed for. See *State ex REL. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶3} On September 20, 2000, Relator filed a Motion for Leave to File a Delayed Appeal from his May 1, 2000 sentencing. On October 18, 2000, this Court denied Relator's motion finding no justification in his delay of over three and one half months in filing his appeal. On October 31, 2000, Relator filed an Application for Reconsideration of the dismissal order. On May 14, 2001, this Court granted Relator's Application for Reconsideration and assigned the Ohio Public Defender to assist Relator in his appeal in appellate case number 2000-CO-60. On July 14, 2001, Relator filed his appellate brief in case number 2000-CO-60.

{¶4} Accordingly, Relator has an adequate remedy at law by virtue of his direct appeal and this Petition is dismissed.

{¶5} Final order. Costs taxed to Relator.

{¶6} Clerk to serve a copy of this order in the parties
as provided by the Civil Rules.

Vukovich, J., concurs.

Waite, J., concurs.

DeGenaro, J., concurs.