

[Cite as *State ex rel. Alicea v. Krichbaum*, 2010-Ohio-610.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO, ex rel.
CLEMENTE ALICEA

RELATOR

VS.

JUDGE R. SCOTT KRICHBAUM,
COMMON PLEAS COURT JUDGE

RESPONDENT

CASE NO. 09 MA 213

OPINION AND JUDGMENT ENTRY

CHARACTER OF PROCEEDINGS:

Complaint for Writ of Mandamus

JUDGMENT:

Dismissed.

APPEARANCES:

For Relator:

Clemente Alicea, Pro se
#A368186
Richland Correctional Institution
1001 Olivesburg Road
P.O. Box 8107
Mansfield, Ohio 44901-8107

For Respondent:

Atty. Paul J. Gains
Mahoning County Prosecutor
Atty. Ralph M. Rivera
Assistant Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

JUDGES:

Hon. Cheryl L. Waite
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: February 18, 2010

PER CURIAM.

{¶1} Relator Clemente Alicea filed a complaint for writ of mandamus with this Court on December 21, 2009. Relator seeks to compel Respondent Judge R. Scott Krichbaum to hold a new sentencing hearing for him in Mahoning County Court of Common Pleas Case No. 97 CR 934. Relator contends that he is entitled to this relief because he believes that his original sentencing order, filed more than 10 years ago, was not a final, appealable order under the holdings of *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163 and *State ex rel. Culgan v. Medina County Court of Common Pleas*, 119 Ohio St.3d 535, 2008-Ohio-4609, 895 N.E.2d 805.

{¶2} Respondent has filed an answer and a Civ.R. 12(C) motion for judgment on the pleadings. “[J]udgment on the pleadings may be granted where no material factual issue exists and the moving party is entitled to judgment as a matter of law.” *State ex rel. Pirman v. Money* (1994), 69 Ohio St.3d 591, 592-593, 635 N.E.2d 26. Based on the allegations in the pleadings, Relator cannot prevail in this action because the trial court’s original sentencing entry conforms with the requirements of *State v. Baker* and is a final, appealable order. However, even if the sentencing entry failed to comply with *State v. Baker* and *State ex rel. Culgan*, these cases do not require a new sentencing hearing to be conducted and we could not grant the relief prayed for in this mandamus action. For these reasons, Relator’s complaint is hereby dismissed.

{¶3} Relator was convicted of rape, with a force specification, in 1999. On February 4, 1999, he was sentenced to life in prison. He filed a direct appeal of the conviction and sentence, and the judgment was affirmed on appeal. *State v. Alicea*, 7th Dist. No. 99 CA 36, 2002-Ohio-6907.

{¶4} A writ of mandamus is defined as “a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” R.C. 2731.01. “[M]andamus will lie when a trial court has refused to render, or unduly delayed rendering, a judgment.” *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459, ¶5. To be entitled to a writ of mandamus, a relator must establish that he or she has a clear legal right to the relief sought, that the respondent has a clear legal duty to perform the requested act, and that the relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Luna v. Huffman* (1996), 74 Ohio St.3d 486, 487, 659 N.E.2d 1279. A mandamus complaint may be dismissed where the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint. *State ex rel. Peebles v. Anderson* (1995), 73 Ohio St.3d 559, 560, 653 N.E.2d 371.

{¶5} On July 9, 2008, the Ohio Supreme Court issued its opinion in *State v. Baker*, and held that, under Crim.R. 32(C), a judgment of conviction must set forth the following to be a final appealable order: “(1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the

signature of the judge; and (4) entry on the journal by the clerk of court.” *Baker*, supra, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, at syllabus.

{¶6} In *State ex rel. Culgan*, supra, the Ohio Supreme Court granted a writ of mandamus to a criminal defendant who had been sentenced in 2002, but who later alleged that his sentencing judgment entry did not conform to the requirements of *State v. Baker*. Similar to Relator’s situation, the defendant in *Culgan* had, many years earlier, filed a direct appeal of his conviction and sentence, and the judgment was upheld on appeal. *State v. Culgan*, 9th Dist. No. 02CA0073-M, 2003-Ohio-2713. In the mandamus action, the Ohio Supreme Court found that the defendant’s sentencing entry did not conform to Crim.R. 32(C) or *State v. Baker*, and the court issued a writ, “to compel [the trial court] to issue a sentencing entry that complies with Crim.R. 32(C) and constitutes a final appealable order.” *State ex rel. Culgan*, supra, 119 Ohio St.3d 535, 2008-Ohio-4609, 895 N.E.2d 805, at ¶11.

{¶7} In the instant case, Relator alleges that his 1999 sentencing entry did not contain the manner of conviction, and for that reason, does not conform to the requirements of *State v. Baker*. Relator is mistaken. The 1999 Judgment Entry clearly states that Relator was found guilty of rape on February 2, 1999, in a jury trial.

{¶8} Furthermore, the remedy allowed in *State ex rel. Culgan* was not an order compelling the trial court to grant a new sentencing hearing, but was instead, an order compelling the trial court to issue a proper sentencing judgment entry. Relator is asking for a new sentencing hearing but has provided no legal basis for us

to require the trial court to perform this task. Since Relator has not shown a legal right to the relief sought, mandamus cannot be granted.

{¶19} Relator cannot prevail on the allegations in his mandamus complaint, and therefore, we grant Respondent's motion for judgment on the pleadings and dismiss the mandamus complaint. Costs taxed against Relator. Final Order. Clerk to serve notice upon the parties as provided by the Civil Rules.

Waite, J., concurs.

Vukovich, P.J., concurs.

DeGenaro, J., concurs.