

[Cite as *State ex rel. Mayes v. Ambrose*, 2012-Ohio-3824.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 98758

**STATE OF OHIO, EX REL.
PETER WILLIAM MAYES**

RELATOR

vs.

JUDGE DICK AMBROSE, ET AL.

RESPONDENTS

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Mandamus and/or Procedendo
Order No. 457551

RELEASE DATE: August 20, 2012

FOR RELATOR

Peter William Mayes, pro se
Inmate No. 442-575
Hocking Correctional Facility
P.O. Box 59
Nelsonville, Ohio 45764

ATTORNEY FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶1} Relator, Peter William Mayes, is the defendant in Cuyahoga C.P. No. CR-442426, which has been assigned to respondent judge who is a member of respondent court. Mayes complains that respondent imposed sentence without properly addressing the issue of allied offenses of similar import under R.C. 2941.25. Mayes argues that his sentence is void and requests this court to issue a writ of mandamus and/or procedendo to compel respondents “to issue a valid judgment in Case No. 02-CR-442426-ZA, and to vacate the sentence without unnecessary delay.” Complaint, Ad Damnum Clause.

{¶2} For the reasons stated below, we dismiss this action sua sponte.

{¶3} In *State ex rel. Gonzalez v. Astrab*, 8th Dist. No. 97922, 2012-Ohio-3582, the relator “Gonzalez argue[d] that his sentence [was] void and request[ed] this court to issue a writ of mandamus and/or procedendo to compel respondents to have him returned to Cuyahoga County ‘to be sentenced to a lawful sentence * * *.’” Complaint, ¶ 11.” *Id.* at ¶ 1. This court granted the motion to dismiss of the respondent judge and the court of common pleas.

{¶4} In *Gonzalez*, we reaffirmed that “allied-offense claims are nonjurisdictional and are not cognizable in an extraordinary-writ action.” (Citation omitted.) *State ex rel. Agosto v. Gallagher*, 8th Dist. No. 97760, 2011-Ohio-4514, ¶ 3, *aff’d*, 131 Ohio St.3d 176, 2012-Ohio-563, 962 N.E.2d 796. In light of *Agosto*, we concluded: “The Supreme

Court has stated clearly that original actions do not provide a remedy for allied-offense claims. As a consequence, we must hold that Gonzalez’s complaint fails to state a claim upon which relief can be granted.” *Gonzalez, supra*, ¶ 4.

{¶5} Likewise, in this action, Mayes requests relief in mandamus and/or procedendo with respect to his claim that respondent judge erroneously sentenced him on allied offenses of similar import. In light of this court’s holdings in *Agosto* and *Gonzalez* as well as the Supreme Court’s affirming *Agosto*, we must also hold in this action that Mayes’s complaint does not state a claim upon which relief can be granted.

{¶6} Accordingly, we dismiss Mayes’s complaint sua sponte. Relator to pay costs. This court directs the clerk of court to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶7} Complaint dismissed.

FRANK D. CELEBREZZE, JR., JUDGE

MARY J. BOYLE, P.J., and
KENNETH A. ROCCO, J., CONCUR