[Cite as *State ex rel. Ellis v. Chambers-Smith*, 2023-Ohio-2671.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. James P. Ellis,	:	
Relator,	:	
v.	:	No. 22AP-14
Annette Chambers-Smith, Director, Ohio Department of Rehabilitation and Corrections,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on August 1, 2023

On brief: *James P. Ellis*, pro se.

On brief: *Dave Yost,* Attorney General, and *George Horvath,* for respondent.

IN MANDAMUS ON OBJECTION TO MAGISTRATE'S DECISION

BEATTY BLUNT, P.J.

{¶ 1} Relator, James P. Ellis, has filed this original action requesting that this court issue a writ of mandamus ordering respondent to "employ, execute, and enforce" an August 2, 2021 order issued by the trial court in his criminal case. Despite the fact that the entry is captioned "Entry Granting Motion for Jail Time Credit" and purports to take no other action but to grant Ellis "credit for time served for a total of 373 days of credit (as of the date of sentencing), plus conveyance time to the institution," *see* Aug. 2, 2021 Entry,

State v. Ellis, Hamilton C.P. No. B-940335 (attached to relator's complaint), Ellis has insisted throughout the current case that the entry is a "resentencing entry." He apparently believes (but does not outright claim) that because the August 2, 2021 entry does not restate or reimpose his underlying criminal sentence and because the state did not appeal from the August 2, 2021 entry that the Ohio Department of Rehabilitation and Corrections ("ODRC"), no longer has any judgment entry authorizing his confinement.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate. Both relator and respondent filed motions for summary judgment, and relator filed several additional procedural motions and attempts to strike respondent's filings. The magistrate considered the action on its merits and issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate concluded that relator could not demonstrate that he was entitled to extraordinary relief in mandamus and recommended that this court deny relator's motion for summary judgment, grant respondent's motion for summary judgment, and deny the requested writ of mandamus. Relator filed a timely objection to the magistrate's decision, and the matter is now before this court for decision.

{¶ 3} Relator has not specifically set forth individual objections to the magistrate's decision, but instead objects to the magistrate's decision in general. Compare Civ.R. 53(D)(3)(b)(ii) and (iii); Loc.R. 2(B). Moreover, in his objection, relator has recast his argument and request for relief; in his complaint, relator states that he was entitled to "a writ of mandamus issue compelling respondent(s) to employ, execute and enforce the 'August 2, 2021-resentencing entry' as it is written." (Jan. 5, 2022 Compl. at 19.) But in his objection, relator now argues that what he seeks is a writ compelling respondent to comply with one of its internal policies, which he claims, "places a clear legal duty on Respondents'

[sic] to: '**contact the committing court immediately,**' . . . and nothing more." (Apr. 13, 2023 Relator's Obj. at 5.) As relator now argues:

> The dispute here is set upon the challenge as to whether: (1) the 'August 2, 2021 'Entry' is a *resentencing entry; (2) Respondents are under a clear legal duty "to contact the committing court immediately" where an inaccuracy exists on the face of said entry pursuant to ODRC Policy 52 RCP 01; and, (3) the entry constitutes a final appealable order.

Id. at 6. Relator argues that all three questions must be answered in the affirmative. We disagree, and for clarity we will address relator's questions in reverse order, as they interrelate in a way that can be confusing.

{¶ 4} Regarding the third question, it is clear that the magistrate correctly held that under R.C. 2929.19(B)(2)(g)(iii) a trial court "retains continuing jurisdiction to correct any error not previously raised at sentencing" in the calculation and awarding of jail credit under R.C. 2967.191, and if "the court changes the number of days in its determination or redetermination, the court shall cause the entry granting that change to be delivered to the department of rehabilitation and correction without delay." R.C. 2929.19(B)(2)(g)(iii). Here, the court did just as it was requested, and the magistrate correctly found that "the uncontroverted record reflects that ODRC has complied with any duty arising under R.C. 2929.19(B)(2)(g)(v) to apply the trial court's revised calculation of relator's jail-time credit." (Mag.'s Decision at 8.) And in *State v. Thompson*, 147 Ohio St.3d 29, 2016-Ohio-2769, ¶ 13, the Supreme Court of Ohio held that a "trial court's determination of a motion for jail-time credit pursuant to R.C. 2929.19(B)(2)(g)(iii) constitutes a special proceeding and affects a substantial right. Accordingly, we hold that the denial of a motion for jail-time credit pursuant to R.C. 2929.19(B)(2)(g)(iii) is a final, appealable order." The August 2, 2021 order directly mirrors the one found to be final and appealable in *Thompson*.

{¶ 5} Regarding the second question, the only alleged "inaccuracy" that relator has identified is that the August 2, 2021 "resentencing" entry does not actually contain a finding of guilt or a sentence. But that puts the cart before the horse—the entry does not purport to be a resentencing entry, after all. Relator believes that such an entry is always mandated to be a resentencing entry, but as *Thompson* demonstrates that does not seem to be the case. In any event, if there is no "inaccuracy," then there is no reason for ODRC "to contact the committing court immediately." Accordingly, it is only if the August 2, 2021 entry is in fact a "resentencing entry" that the purported duty could even be alleged to exist.

{¶ 6} And that brings us to relator's first question. In support of his argument that the entry *must necessarily* be a resentencing entry, relator relies upon *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, and *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, to argue that because an entry issued in a criminal case under R.C. 2929.19(B)(2)(g)(iii) does not contain an "adjudication of guilty and an ensuing sentence" it cannot be a final appealable order, and thereby implies that it is a "resentencing entry" without a sentence. But as can be seen, this question assumes what it attempts to prove—relator can only argue that the August 2, 2021 entry is a "resentencing" entry if he can show that *only* resentencing entries are final orders. And as we have seen, *Thompson* held precisely the opposite. There is literally nothing in the August 2, 2021 entry to suggest it is anything other than an entry granting additional R.C. 2967.191 confinement credit that complies with *Thompson*. There is certainly no reason for this court to treat it as a "resentencing entry" when it does not even purport to be one.

{¶ 7} In summary, both the trial court, in granting relator additional jail-time credit and respondent in recording that credit acted properly, and relator has not and cannot show that either has failed to perform a clear legal duty to which they were obliged.

Therefore, we overrule relator's objection to the magistrate's decision and adopt that decision as our own, including the findings of fact and the conclusions of law therein. Relator has failed to demonstrate he is entitled to extraordinary relief, and in accordance with the magistrate's decision, the requested writ of mandamus is denied.

Objection overruled;
writ of mandamus denied.

JAMISON and LELAND, JJ., concur.

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APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. James P. Ellis,	:	
Relator,	:	
v.	:	No. 22AP-14
Annette Chambers-Smith, Director, Ohio Department of Rehabilitation and Correction,	:	(REGULAR CALENDAR)
Respondent.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on March 31, 2023

James P. Ellis, pro se.

Dave Yost, Attorney General, and *George Horvath,* for respondent.

IN MANDAMUS
ON MOTIONS

{¶ 8} Relator, James P. Ellis, has filed this original action seeking a writ of mandamus against respondent, Annette Chambers-Smith, in her capacity as director of the Ohio Department of Rehabilitation and Correction ("ODRC").

I. Findings of Fact

{¶ 9} 1. Relator is incarcerated at Marion Correctional Institution in Marion, Ohio.

{¶ 10} 2. Respondent Annette Chambers-Smith is the director of ODRC, a state governmental agency responsible for, among other duties, operating Ohio's prison system.

{¶ 11} 3. In 1995, relator was sentenced in two criminal cases in the Hamilton County Court of Common Pleas.

{¶ 12} 4. In Hamilton County Court of Common Pleas case No. B 9403355, relator was found guilty, following trial by jury, of aggravated murder in violation of R.C. 2903.01, which was listed in the indictment as count three, and aggravated burglary in violation of R.C. 2911.11, which was listed in the indictment as count four. On March 31, 1995, relator was sentenced to incarceration "for a period of life imprisonment in count #3 and ten (10) years to a maximum of twenty-five (25) years with ten (10) years actual incarceration in count #4 to run consecutively to count #3 with credit of two hundred ninety-six (296) days given for time served." (Emphasis omitted.) (ODRC's Certified Record at 6.)

{¶ 13} 5. In Hamilton County Court of Common Pleas case No. B 940513, following a plea and finding of guilty for the offense of vandalism in violation of R.C. 2909.05, relator was sentenced on July 27, 1995 to a period of incarceration of six months with credit for six months served. (ODRC's Certified Record at 14.)

{¶ 14} 6. In case No. B 9403355, the trial court granted relator's motion for jail- time credit in an entry filed on August 2, 2021. The trial court granted relator "373 days credit (as of the date of sentencing), plus conveyance time to the institution" and stated that "[t]his credit includes any credit previously given." (ODRC's Certified Record at 5.)

{¶ 15} 7. On January 5, 2022, relator filed his complaint in mandamus in the instant case and a motion to proceed in forma pauperis. Relator sought the following relief in his complaint:

> 1. a writ of mandamus issue compelling [ODRC] to employ, execute and enforce the 'August 2, 2021-resentencing entry' as it is written;
>
> 2. a writ of mandamus issue directing [ODRC] disavow and discontinue any and all attempts to implicate the *Baker* ("one-document rule");
>
> 3. a writ of mandamus issue compelling [ODRC] to yield to the mandatory prohibition enumerate in *State ex rel. Fraley v. Ohio Dep't of Rehab and Corr.*; and, *State v. Henderson*, *supra* as are made obligatory by law in such cases as are redolent here.

(Sic passim.) (Compl. at 19-20.)

{¶ 16} 8. On January 27, 2022, the magistrate provisionally granted relator's motion to proceed in forma pauperis, stating that the court will revisit and definitively evaluate relator's status upon termination of the case.

{¶ 17} 9. ODRC filed a motion to dismiss on March 4, 2022. ODRC filed a motion to withdraw its motion to dismiss on March 31, 2022, which was granted on the same day. ODRC filed its answer on April 21, 2022.

{¶ 18} 10. On May 24, 2022, relator filed an appendix of evidentiary documents and other probative materials. On May 25, 2022, ODRC filed a presentation of evidence pursuant to Loc.R. 13(G) of the Tenth District Court of Appeals.

{¶ 19} 11. Relator filed a motion for summary judgment on June 7, 2022, his brief on June 14, 2022, and a motion for leave to file supplemental evidentiary submission on June 17, 2022.

{¶ 20} 12. ODRC filed its brief on July 1, 2022. On July 5, 2022, ODRC filed a combined cross-motion for summary judgment and memorandum in opposition to relator's June 7, 2022 motion for summary judgment.

{¶ 21} 13. On July 18, 2022, relator filed a motion for extension of time to file responsive pleadings, a motion to strike ODRC's "brief in opposition; and, [ODRC's] opposit(ion) and cross-motion for summary judgment," and a motion to strike ODRC's July 1, 2022 "reply brief." On July 19, 2022, relator filed a motion to strike ODRC's "labeled miscellaneous papers, filed: 'July 5, 2022.' " On July 21, 2022, relator filed a "motion/memorandum contra '[ODRC's] opposition' dated: 'July 5, 2022.' " On July 29, 2022, relator filed a second "motion/memorandum contra, [ODRC'S] []'Cross-Motion'[] for Summary Judgment, (d)ated: 'July 5, 2022.' "

{¶ 22} 14. ODRC filed a motion for extension of time to plead as to relator's July 29, 2022 memorandum contra on August 4, 2022.

{¶ 23} 15. Relator filed a "motion/memorandum contra, [ODRC's] opposition to relator's motion(s) to strike" on August 5, 2022. On August 16, 2022, relator filed a "motion/memorandum in opposition to: [ODRC'S] motion for "1. leave to file a secondary responsive pleading in opposition to Relator's "July 29, 2022-motion/memorandum contra, [ODRC's] []'cross-motion'[] for summary judgment; and, 2. an extension of time

through August 26, 2022, in which to file said hybrid secondary reply." Also on August 16, 2022, relator filed a motion for order of admonishment.

{¶ 24} 16. The matter is now before the magistrate on relator's motion for summary judgment and ODRC's cross-motion for summary judgment.

II. Discussion and Conclusions of Law

{¶ 25} Central to this mandamus action is the import of the trial court's August 2, 2021 entry granting relator's motion for jail-time credit. Relator argues that this entry, which he characterizes as a "resentencing entry," "failed to articulate a judgment of conviction or impose any sentence other than []373 days of jail time credit." (Compl. at 9-10.)

A. Summary Judgment and Mandamus Standard

{¶ 26} Summary judgment is appropriate only when the moving party demonstrates: (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183 (1997). In ruling on a motion for summary judgment, the court must resolve all doubts and construe the evidence in favor of the nonmoving party. *Premiere Radio Networks, Inc. v. Sandblast, L.P.*, 10th Dist. No. 18AP-736, 2019-Ohio-4015, ¶ 6.

{¶ 27} Pursuant to Civ.R. 56(C), the party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and of identifying those portions of the record demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). The moving party cannot satisfy this initial burden by simply making conclusory allegations, but instead must demonstrate, including by use of affidavit or other evidence allowed by Civ.R. 56(C), that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Wiltshire Capital Partners v. Reflections II, Inc.*, 10th Dist. No. 19AP-415, 2020-Ohio-3468 at ¶ 13. If the moving party fails to satisfy this initial burden, the court must deny the motion for summary judgment; however, if the moving party satisfies the initial burden, the nonmoving party has a burden to respond, by affidavit or otherwise as provided under Civ.R. 56, with specific facts demonstrating a genuine issue exists for trial. *Dresher* at 293;

Hall v. Ohio State Univ. College of Humanities, 10th Dist. No. 11AP-1068, 2012-Ohio-5036, ¶ 12, citing *Henkle v. Henkle*, 75 Ohio App.3d 732, 735 (12th Dist.1991).

{¶ 28} In order for a court to issue a writ of mandamus, a relator must establish (1) the relator has a clear legal right to the requested relief, (2) the respondent is under a clear legal duty to provide the relief, and (3) the relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 29 (1983), citing *State ex rel. Harris v. Rhodes*, 54 Ohio St.2d 41, 42 (1978). The relator bears the burden of establishing entitlement to a writ of mandamus by clear and convincing evidence. *State ex rel. Ware v. Crawford*, 167 Ohio St.3d 453, 2022-Ohio-295, ¶ 14. "Clear and convincing evidence is 'that measure or degree of proof which is more than a mere "preponderance of the evidence," but not to the extent of such certainty as is required "beyond a reasonable doubt" in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.' " *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, ¶ 18, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

B. Jail-Time Credit Under Ohio Law

{¶ 29} "The practice of awarding jail-time credit, although now covered by state statute, has its roots in the Equal Protection Clauses of the Ohio and United States Constitutions." *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, ¶ 7. *See State ex rel. Williams v. Chambers-Smith*, 10th Dist. No. 19AP-388, 2020-Ohio-1344, ¶ 4 ("A criminal defendant has a general right to credit for [the time spent in] confinement prior to sentencing."). Pursuant to R.C. 2967.191, the "department of rehabilitation and correction shall reduce the prison term of a prisoner * * * by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced."

{¶ 30} R.C. 2929.19 governs requirements for sentencing courts. The statute, which has been considerably altered since the imposition of relator's sentences, was amended effective September 28, 2012 by 2012 Am.Sub.S.B. No. 337, adding provisions related to jail-time credit. Under the present provisions of R.C. 2929.19(B)(2)(g)(i), the trial court is required to "[d]etermine, notify the offender of, and include in the sentencing entry the total number of days, including the sentencing date but excluding conveyance time, that

the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which the department of rehabilitation and correction must reduce the definite prison term imposed on the offender as the offender's stated prison term." R.C. 2929.19(B)(2)(g)(iii) provides in pertinent part as follows:

> The sentencing court retains continuing jurisdiction to correct any error not previously raised at sentencing in making a determination under division (B)(2)(g)(i) of this section. The offender may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination under division (B)(2)(g)(i) of this section, and the court may in its discretion grant or deny that motion. If the court changes the number of days in its determination or redetermination, the court shall cause the entry granting that change to be delivered to the department of rehabilitation and correction without delay.

{¶ 31} Thus, pursuant to R.C. 2929.19(B)(2)(g)(iii), a trial court has jurisdiction to resolve an offender's motion to correct an error in determining jail-time credit at any time after sentencing. *See State v. Thompson*, 147 Ohio St.3d 29, 2016-Ohio-2769, ¶ 11 ("Prior to the enactment of R.C. 2929.19(B)(2)(g)(iii), an offender was able to seek correction of an error made in determining jail-time credit only on direct appeal."); *Ohio v. Simpson*, 10th Dist. No. 21AP-52, 2021-Ohio-4066, ¶ 15. R.C. 2929.19(B)(2)(g)(iv) provides that an "inaccurate determination" of an offender's jail-time credit "is not grounds for setting aside the offender's conviction or sentence and does not otherwise render the sentence void or voidable." R.C. 2929.19(B)(2)(g)(v) provides that ODRC shall "rely upon the latest journal entry of the court in determining the total days of local confinement" as specified by that section.

C. Application

{¶ 32} First, it is important to recognize that error in the calculation of jail-time credit is "remediable in the ordinary course of law by appeal or motion for jail-time credit" under R.C. 2929.19(B)(2)(g)(iii). *State ex rel. Williams v. McGinty*, 129 Ohio St.3d 275, 2011-Ohio-2641, ¶ 2. For this reason, the Supreme Court of Ohio has held that "[a]lleged errors regarding an award of jail-time credit are not cognizable in mandamus." *State ex rel. Sands v. Culotta*, 165 Ohio St.3d 172, 2021-Ohio-1137, ¶ 12. Relator availed himself of a plain and adequate remedy at law by filing with the trial court a motion to correct jail-time credit. If relator disagreed with the trial court's resolution of his motion for jail-time credit,

he could have availed himself of his right to appeal. *See Thompson*, 2016-Ohio-2769, ¶ 13 (holding that a trial court's resolution of a "motion for jail-time credit pursuant to R.C. 2929.19(B)(2)(g)(iii) is a final, appealable order"). Thus, insofar as relator asserts any error in the trial court's resolution of his motion for jail-time credit, the availability of a plain and adequate remedy at law, among other reasons, precludes the issuance of a writ of mandamus on such grounds in this matter. *State ex rel. Jackson v. Franklin Cty. Court of Common Pleas*, 10th Dist. No. 05AP-571, 2006-Ohio-1752, ¶ 10 (finding adequate remedy by direct appeal precluded mandamus).

{¶ 33} Next, relator states in his motion for summary judgment that he "is not (in any form and in any respect) tempting that he is in any way entitled to either: (1) immediate release from custody; or, (2) the custody of another, nor has or is relator offering any argument that his conviction is []invalid, rather, only that respondents[] have []unconstitutionally taken on the mantle and burdens squarely placed on the Hamilton County Common Pleas Court and have []resentenced relator de facto." (Relator's Mot. for Summ. Jgmt. at 12.) However, relator also contends that "[t]here is nothing to enforce save 373 days of already served jail time credit" and states that ODRC has an "insatiable desire to exercise lawful privilege to intentionally confine where none exists." (Relator's Mot. for Summ. Jgmt. at 12.) Regardless, insofar as relator would claim he is wrongfully held and entitled to immediate release, such claim must be brought in an action for habeas corpus, not mandamus. *State ex rel. Johnson v. Ohio Parole Bd.*, 80 Ohio St.3d 140, 141 (1997). *See State ex rel. Mango v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 18AP-945, 2021-Ohio-1314, ¶ 6.

{¶ 34} Turning to relator's claims for relief, relator asserts in his motion for summary judgment that ODRC is under a clear legal duty to enforce and execute the terms of the trial court's August 2, 2021 entry. As previously noted, relator argues the trial court's August 2, 2021 entry resulted in there being "nothing [for ODRC] to enforce save 373 days of already served jail time credit." (Relator's Mot. for Summ. Jgmt. at 12.) Relator bases his argument in part on the assertion that R.C. 2929.19(B)(2)(g)(v) "requires [ODRC] to rely solely []on the latest[] entry." (Relator's Mot. for Summ. Jgmt. at 13.)

{¶ 35} Relator's misconception regarding the meaning of R.C. 2929.19(B)(2)(g)(v) appears to stem from his characterization of the August 2, 2021 entry as a "resentencing

entry." *Id.* However, nothing in R.C. 2929.19(B)(2)(g) requires a trial court to resentence the offender in resolving a motion for jail-time credit. Indeed, pursuant to R.C. 2929.19(B)(2)(g)(iv), an inaccurate determination of jail-time credit is not grounds for setting aside the offender's conviction or sentence and does not otherwise render the sentence void or voidable. R.C. 2929.19(B)(2)(g)(v) provides that ODRC shall "rely upon the latest journal entry of the court in determining the total days of local confinement for purposes of division (B)(2)(g)(i) to (iii) of this section and [R.C.] 2967.191." Contrary to relator's arguments, R.C. 2929.19(B)(2)(g)(v), when considered in pari materia with R.C. 2929.19(B)(2)(g)(iv), does not invalidate or otherwise render unlawful an offender's conviction or sentence.

{¶ 36} Here, the uncontroverted record reflects that ODRC has complied with any duty arising under R.C. 2929.19(B)(2)(g)(v) to apply the trial court's revised calculation of relator's jail-time credit contained in the August 2, 2021 entry. ODRC's January 13, 2022 sentence computation letter, supported by the May 24, 2022 affidavit of Angela Dailey, a correctional records sentence computation auditor with ODRC's Bureau of Sentence Computation, reflects that the trial court's August 2, 2021 entry was applied to the overall calculation of relator's days of confinement. Dailey stated that relator "was granted 373 days jail time credit on 8/2/2021," and ODRC "applied the 373 days credit from the entry with the 46 days of conveyance for a total of 419 days jail time credit." (ODRC's Ex. A at 4.)

{¶ 37} Relator cannot show a clear legal right under R.C. 2929.19(B)(2)(g)(v) to the requested relief as ODRC fulfilled any duty arising under such section by applying the trial court's calculation of relator's jail-time credit contained in its August 2, 2021 entry. Thus, relator cannot demonstrate a clear legal right to the requested relief in the form of an order "compelling [ODRC] to employ, execute and enforce the 'August 2, 2021-resentencing entry' as it is written," because ODRC has already applied the jail-time credit provided in the judgment to the determination of relator's sentence. (Compl. at 19-20.) *See Williams* at ¶ 6-7 (denying writ of mandamus ordering ODRC to correct its records to include jail-time credit where credit was already reflected in ODRC's determination of the expiration of the offender's maximum sentence). Mandamus will not issue to compel a vain act. *State ex rel. Keith v. Gaul*, 147 Ohio St.3d 270, 2016-Ohio-5566, ¶ 16. An act is in vain when the underlying dispute has become moot, such that relief in the pending lawsuit would not

affect the outcome. *State ex rel. Peoples v. O'Shaughnessy*, 165 Ohio St.3d 54, 2021-Ohio-1572, ¶ 11.

{¶ 38} Relator also argues ODRC is under a duty to contact the committing court upon recognition of inaccuracies in the commitment papers based on 52-RCP-01, an internal policy of ODRC. "R.C. Chapter 5120 grants broad powers to [ODRC] regarding all aspects of the Ohio prison system." *O'Neal v. State*, 10th Dist. No. 19AP-260, 2020-Ohio-506, ¶ 35. Among other powers, the General Assembly has authorized ODRC to "maintain, operate, manage, and govern all state institutions for the custody, control, training, and rehabilitation of persons convicted of crime and sentenced to correctional institutions." R.C. 5120.05. With regard to the authority of the director of ODRC, R.C. 5120.01 provides that "[a]ll duties conferred on the various divisions and institutions of the department by law or by order of the director shall be performed under the rules and regulations that the director prescribes and shall be under the director's control."

{¶ 39} "A court in a mandamus proceeding cannot create the legal duty the relator would enforce through it." *State ex rel. Hodges v. Taft*, 64 Ohio St.3d 1, 3 (1992). An internal policy of an agency alone does not create a legal duty enforceable in mandamus. *State ex rel. Aaron's, Inc. v. Ohio Bur. of Workers' Comp.*, 148 Ohio St.3d 34, 2016-Ohio-5011, ¶ 26. Rather, "[o]nly the legislature can create a legal duty to be enforced in mandamus." *State ex rel. Clough v. Franklin Cty. Children Servs.*, 144 Ohio St.3d 83, 2015-Ohio-3425, ¶ 15. " ' "With respect to penal institutions, prison administrators must be accorded deference in adopting * * * policies and practices to preserve internal order and to maintain institutional security." ' " *State ex rel. McDougald v. Sehlmeyer*, 162 Ohio St.3d 94, 2020-Ohio-3927, ¶ 15, quoting *State ex rel. Dehler v. Mohr*, 129 Ohio St.3d 37, 2011-Ohio-959, ¶ 2, quoting *Briscoe v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 02AP-1109, 2003-Ohio-3533, ¶ 16. The Supreme Court of Ohio has held that "[p]rison regulations" adopted under ODRC's broad grant of authority to regulate the internal affairs of prisons are "primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479 (1997).

{¶ 40} In support of his argument, relator points to a document attached to his June 17, 2022 motion for leave to file a supplemental evidentiary submission, which he identifies

as ODRC policy 52-RCP-01. This document, which lists an effective date of January 26, 2008, establishes standard procedures to regulate admissions to ODRC's receptions centers. *See Oko v. Mohr*, 11th Dist. No. 2011-A-0045, 2012-Ohio-1450, ¶ 16 (stating that 52-RCP-01, which "establishes standard procedures regulating admission to ODRC reception centers," is not "a[n] [administrative] rule but instead is a policy issued by the ODRC pursuant to R.C. 5120.01"). The purported policy states that the "transporting officer must have a certified Judgment Entry legally committing the offender to the Department" and that the "Records Officer in charge shall * * * [r]eview the commitment papers to ensure that they are certified, valid and accurate. If inaccuracies exist, the offender shall not be accepted, and the committing court shall be contacted immediately." (Relator's June 17, 2022 Mot. for Leave to File Supp. Evidentiary Submission at 4-5.)

{¶ 41} Leaving aside the question of whether the version of the policy identified by relator remains effective, relator cannot demonstrate that the provisions he identifies in the policy confer on him a right to the requested relief. This policy falls under the General Assembly's broad grant of authority to ODRC to enable the agency to guide correctional officials in prison administration rather than to confer a right on inmates such as relator. *Larkins* at 479. Thus, mandamus will not issue to compel ODRC to act upon this internal policy. Additionally, relator cannot demonstrate ODRC had a clear legal duty to perform the requested act under this policy because, as will be discussed further below, ODRC was acting in accordance with valid sentencing entries from the trial court. *See Likes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 05AP-709, 2006-Ohio-231, ¶ 12 (noting the appellant's arguments regarding 52-RCP-01 and stating that "even if this policy was applicable, appellant has failed to demonstrate any violation because it is clear that [ODRC] was acting in accordance with a valid judgment entry, despite appellant's assertions to the contrary").

{¶ 42} Relator's remaining requests for relief relate to several decisions of the Supreme Court of Ohio. Relator argues that he is entitled to a writ of mandamus "directing [ODRC] disavow and discontinue any and all attempts to implicate the * * * []'one-document rule[]'." under *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. (Compl. at 19-20.) In *Baker*, the court answered the question of what a judgment of conviction must include pursuant to Crim.R. 32(C) to become a final appealable order. The court held that

"the judgment of conviction is a single document that need not necessarily include the plea entered at arraignment." *Id.* at ¶ 1. Further, the court held that "[a] judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (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." *Id.* at paragraph one of the syllabus. *Baker* does not address what must be contained in a trial court's entry granting a motion for jail-time credit pursuant to R.C. 2929.19(B)(2)(g)(iii). Therefore, relator fails to demonstrate a clear legal right to relief or that ODRC is under a clear legal duty to act pursuant to *Baker*.

{¶ 43} Finally, relator argues he is entitled to a writ of mandamus ordering ODRC to comply with *State ex rel. Fraley v. Ohio Dept. of Rehab. & Corr.*, 161 Ohio St.3d 209, 2020-Ohio-4410, and *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784. Relator asserts that ODRC "simply cannot (as a matter of law) retain and exercise and employ any part or portion of the former 'March 31, 1995-entry' to thus attempt to do indirectly again, that which cannot be done directly as a matter of law under *Baker*; *Fraley*; and, *Henderson*." (Relator's Compl. at 15.) Relator cannot demonstrate a clear right to the requested relief or that ODRC is under a clear duty to act under these decisions.

{¶ 44} In *Fraley*, ODRC lengthened the offender's sentence contrary to the express language contained in the offender's sentencing entries based on ODRC's interpretation of the law. The Supreme Court of Ohio held that regardless of whether the sentencing "entries contained a legal error favoring Fraley," ODRC "has a clear legal duty to carry out the sentence that the trial court imposed." Therefore, the court granted a writ of mandamus ordering ODRC to correct its records to execute the sentence actually imposed by the sentencing court. *Fraley* at ¶ 18.

{¶ 45} In *Henderson*, the court considered whether to declare a sentence void and allow the state to correct an error in sentencing through a motion for resentencing. The court concluded that "sentences based on an error, including sentences in which a trial court fails to impose a statutorily mandated term, are voidable if the court imposing the sentence has jurisdiction over the case and the defendant." *Henderson* at ¶ 1.

{¶ 46} Relator's convictions in case No. B 9403355 were affirmed on direct appeal. *State v. Ellis* ("*Ellis I*"), 1st Dist. No. C-950307, 1996 Ohio App. LEXIS 3831 (Sept. 4, 1996).

Thereafter, the First District Court of Appeals reviewed appellant's arguments that his sentences in that case were "void because of the sequence in which his consecutive prison terms had been 'ordered' to be served." *State v. Ellis* ("*Ellis II*"), 1st Dist. No. C-180331, 2019-Ohio-3164, ¶ 14. The court found that: "Ellis's sentences fully conformed with the 1995 versions of R.C. 2929.03(A)(1)(a), 2929.11(B)(1)(a), and 2929.41(B)(1)," which "authorized the trial court to impose prison terms of life without parole for aggravated murder and ten to 25 years, with ten years of actual incarceration, for aggravated burglary and to order that those terms be served consecutively." *Id.* at ¶ 13. The court noted that the "1995 version of R.C. 2929.41(C)(4) required that a definite prison term be served before an indefinite term." *Id.* at ¶ 15. The court found the sentencing court did not order "that Ellis's life term be served before his ten-year-actual-to-25-year term," and therefore concluded that "the absence from the judgment of conviction of an order concerning the sequence for serving consecutive sentences has not been held to render those sentences void." *Id.* at ¶ 15.

{¶ 47} The above determination in *Ellis II* is consistent with the pronouncement in *Fraley* that "[w]hen a statute requires sentences to be served consecutively and the sentencing entry is silent as to how the sentences are to run, the statute controls." *Fraley* at ¶ 13, citing *State ex rel. Thompson v. Kelly*, 137 Ohio St.3d 32, 2013-Ohio-2444, ¶ 10. Relator fails to demonstrate that ODRC is not applying the terms of the trial court's March 31, 1995 sentencing entry. Additionally, for the reasons discussed in the resolution of relator's arguments related to R.C. 2929.19(B)(2)(g), relator has failed to demonstrate that ODRC did not apply to relator's sentence the jail-time credit as determined by the trial court in its August 2, 2021 entry. As a result, *Fraley* is inapposite to the matter at hand. *See State ex rel. Holman v. Ohio Adult Parole Auth.*, __ Ohio St.3d __, 2023-Ohio-692, ¶ 13. Furthermore, relator fails to demonstrate any error in the March 31, 1995 sentencing entry or error regarding ODRC's execution of the sentence imposed by the trial court in that entry. As a result, *Henderson* is not applicable to this matter. Therefore, relator fails to demonstrate a clear legal right to the requested relief or that ODRC is under a clear legal duty to act based on *Henderson* and *Fraley*.

D. Conclusion

{¶ 48} Because relator cannot demonstrate entitlement to extraordinary relief in mandamus, it is the decision and recommendation of the magistrate that the court should deny relator's motion for summary judgment, grant ODRC's motion for summary judgment, and accordingly deny the requested writ of mandamus.

{¶ 49} Relator's June 17, 2022 motion for leave to file supplemental evidentiary submission is granted. Relator's July 18, 2022 motion for extension of time to file responsive pleadings is granted such that relator's July 21, 2022 reply brief and July 21, 2022 "motion/memorandum contra" are deemed timely filed. ODRC's August 4, 2022 motion for extension of time is rendered moot. The following motions are denied: relator's July 18, 2022 motion to strike ODRC's "brief in opposition; and, [ODRC's] opposit(ion) and cross-motion for summary judgment"; relator's July 18, 2022 motion to strike ODRC's July 1, 2022 "reply brief"; relator's July 19, 2022 motion to strike; and relator's August 16, 2022 motion for order of admonishment.

{¶ 50} Finally, despite appearing to be memoranda contra, several of relator's filings are captioned as both a motion and memorandum contra. As memoranda contra, no action is required; however, to the extent such filings are construed as motions, they are moot. Accordingly, relator's July 21, 2022 "motion/memorandum contra," July 29, 2022 "motion/memorandum contra," August 5, 2022 "motion/memorandum contra," and August 16, 2022 "motion/memorandum in opposition" are rendered moot.

/S/ MAGISTRATE
JOSEPH E. WENGER IV

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b). A party may file written objections to the magistrate's decision within fourteen days of the filing of the decision.