

**THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO**

STATE OF OHIO ex rel.	:	<b>PER CURIAM OPINION</b>
CHARLES L. CECIL,	:	
	:	
Relator,	:	<b>CASE NO. 2008-L-185</b>
	:	
- vs -	:	
	:	
JUDGE VINCENT A. CULLOTA,	:	
LAKE COUNTY COURT OF	:	
COMMON PLEAS,	:	
	:	
Respondent.		

Original Action for Writ of Mandamus.

Judgment: Writ denied.

*Charles L. Cecil*, pro se, PID: A492-036, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Relator).

*Charles E. Coulson*, Lake County Prosecutor, and *Michael L. DeLeone*, Assistant Prosecutor, Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Respondent).

PER CURIAM.

{¶1} This action in mandamus is presently before this court for final disposition of the summary judgment motion of respondent, Judge Vincent A. Culotta of the Lake County Court of Common Pleas. As the primary basis for the motion, respondent states that he is entitled to prevail on the mandamus claim because he has already completed the act which relator, Charles L. Cecil, sought to compel. For the following reasons, we conclude that summary judgment is warranted under the facts of this case.

{¶2} A review of the evidentiary materials before this court shows that, in April 2005, relator was a defendant in a criminal proceeding before respondent. At the close of this proceeding, relator entered a plea of guilty to a single count of robbery, a second-degree felony under R.C. 2911.02(A)(1). Upon accepting the plea, respondent ordered relator to serve a prison term of five years and pay restitution. Based on this conviction, relator is presently an inmate at the Lake Erie Correctional Institution.

{¶3} In January 2008, relator submitted a motion to withdraw his guilty plea in the criminal case, essentially asserting that his decision to enter the new plea had been predicated upon improper advice from his trial counsel. Even though the state filed its response to the motion to withdraw within one month, respondent did not issue a ruling on the matter immediately. As a result, relator brought this separate proceeding against respondent for a writ of mandamus.<sup>1</sup> For his relief under his sole claim, he requested that respondent be compelled to render a final determination on his pending motion to withdraw the guilty plea.

{¶4} In now moving for summary judgment as to the entire mandamus claim, respondent contends that the merits of this action have become moot because he has recently issued a written judgment regarding the motion to withdraw. Specifically, he submits that, on January 26, 2009, he released a written decision which fully addressed the merits of relator's motion and expressly overruled it. In support of his contention, respondent has attached to his summary judgment motion copies of the judgment in question and the docket of the underlying criminal proceeding. Our review of the two documents indicate that they have been duly certified as true and accurate copies by a

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1. In his mandamus petition, relator referred to respondent as "Judge Vincent A. Cullota." For the sake of clarity, this court would note that the correct spelling of respondent's last name is "Culotta."

deputy of the Lake County Clerk of Courts.

{¶5} In responding to the summary judgment motion, relator has not contested the authenticity of the copy of January 26, 2009 written judgment. Furthermore, relator has not attached to his response any separate evidentiary materials; therefore, he has not attempted to create any factual dispute concerning the issuance of the judgment on the motion to withdraw. Nevertheless, he still maintains that this action must go forward because respondent has not made a ruling on all of the issues he has raised regarding the validity of his conviction.

{¶6} In relation to this point, relator states in his response that, while his motion to withdraw the guilty plea was pending before respondent, he also filed a motion for the taking of “judicial notice” of a recent decision of the Ohio Supreme Court. According to relator, he asserted in the new motion that, in light of the holding in *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, he was entitled to have his conviction declared null and void. Relator now contends that, even though his new “*Colon*” argument was properly before respondent when the January 26, 2009 judgment was rendered, respondent did not address the merits of that particular argument.

{¶7} As to the “judicial notice” motion, this court would first note that relator’s mandamus petition did not contain any reference to respondent’s alleged failure to go forward on that motion; instead, the petition focused solely upon the motion to withdraw the guilty plea. Second, our reading of the January 26, 2009 judgment readily indicates that, in addition to the motion to withdraw, respondent also rendered a final ruling on the motion for judicial notice. That is, respondent expressly concluded that relator could not be afforded any relief under the new Supreme Court precedent because he was barred

from raising the issues which had been discussed in the *Colon* decision. In support of his conclusion, respondent emphasized the following: (1) the *Colon* holding could not be applied retroactively; and (2) as of the date that the *Colon* decision was issued, relator's criminal case had not been pending before any court of this state.

{¶8} In claiming that respondent did not truly go forward on his "judicial notice" motion, relator refers to the fact that respondent never made a determination regarding whether his robbery conviction should be declared void due to an error in the underlying indictment. In other words, it is relator's position that a proper ruling will not exist until respondent has applied *Colon* to the specific facts of his criminal case. However, under the analysis in respondent's written judgment, relator's conviction can never be subject to *Colon* because the *Colon* holding can only be applied prospectively to pending cases. To the extent that respondent's analysis resulted in a complete resolution of the motion for judicial notice, it constituted a final decision from which an immediate appeal could be taken under R.C. 2505.02(B).

{¶9} In discussing the general nature of respondent's judgment of January 26, 2009, it is not the intention of this court to comment upon the actual merits of his legal analysis. As we have noted on numerous prior occasions, an action in mandamus is not an appropriate procedural mechanism for challenging the merits of a trial judge's actual decision:

{¶10} "As a general proposition, the essential purpose of a writ of mandamus is to require a public official to complete a specific act which he has a legal obligation to do. \*\*\* In applying this essential purpose in the context of cases involving a judge's duty to rule upon pending motions, this court has emphasized that the writ cannot be

used as a means of mandating a trial judge's holding on a particular matter; that is, while the writ will lie to require a judge to dispose of a pending motion, it will not lie to require a specific ruling. \*\*\* In recognizing the foregoing distinction, the Supreme Court of Ohio has stated that, although the writ can be employed to force a judge to go forward and exercise his discretion, it cannot be used to actually control the judge's discretion. \*\*\*." (Citations omitted). *State ex rel. Verbanic v. Bernard*, 11th Dist. No. 2006-T-0080, 2007-Ohio-1786, at ¶6.

{¶11} Consistent with the foregoing discussion, this court has further held that, once the trial judge's decision on the pending motion has been made, the mandamus action is barred because the relator has an adequate legal remedy through an appeal of the determination. *Cunningham v. Lucci*, 11th Dist. No. 2006-L-052, 2006-Ohio-4666, at ¶11-12. In turn, this means that, after the trial judge has performed his legal duty and made a ruling, the merits of the mandamus action become moot. *Id.* at ¶9.

{¶12} In the instant matter, the evidentiary materials before us readily establish that respondent has rendered a final ruling as to both the motion to withdraw the guilty plea and the motion for judicial notice. Accordingly, since respondent has fulfilled his legal obligation in relation to the underlying criminal case, relator will never be able to satisfy the essential element for a writ of mandamus; i.e., the requirement that the public official has not fully performed a clear legal duty.

{¶13} In a summary judgment exercise under Civ.R. 56(C), the moving party is entitled to prevail when he has been able to demonstrate that: "(1) there are no genuine factual disputes remaining to be litigated; (2) he is entitled to judgment as a matter of law; and (3) the evidentiary materials are such that, even when those materials are

interpreted in a way which is most favorable to the non-moving party, a reasonable person could only come to a conclusion adverse to the non-moving party.” *Sper v. Gansheimer*, 11th Dist. No. 2003-A-0124, 2004-Ohio-2443, at ¶7. In light of our prior discussion, this court concludes that respondent has met the foregoing standard as to his contention that the merits of this action are now moot. That is, he has shown that there is no dispute that he has gone forward on the pending motions and rendered a final decision in the underlying criminal proceeding. Thus, because relator has already obtained the specific relief which he sought in bringing this action, respondent is entitled to final judgment as a matter of law.

{¶14} Respondent’s motion for summary judgment is granted. It is the order of this court that the writ of mandamus is denied, and that final judgment is hereby entered in favor of respondent in regard to relator’s entire mandamus petition.

DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., TIMOTHY P. CANNON, J.,  
concur.