

[Cite as *State ex rel. Bachman v. Heath*, 2010-Ohio-233.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO EX REL. RONALD
BACHMAN

Relator

-vs-

HON. TARYN L. HEATH

Respondent

JUDGES:

Hon. W. Scott Gwin, P. J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 2009 CA 00241

OPINION

CHARACTER OF PROCEEDING:

Writ of Mandamus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

January 25, 2010

APPEARANCES:

For Relator

RONALD BACHMAN
PRO SE
RICHLAND CORRECTIONAL INST.
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Post Office Box 8107
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For Respondent

JOHN D. FERRERO, JR.
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Wise, J.

{¶1} Relator, Ronald Bachman, has filed a Complaint requesting the issuance of a writ of mandamus compelling the trial court to conduct a sentencing hearing based upon the allegation the original sentencing entry issued by the trial court is void. Respondent has filed a Reply to the Complaint and a Motion to Dismiss. Relator has filed a response to the Motion to Dismiss.

{¶2} The sole allegation raised in the Complaint is the entry issued by the trial court is void because it included the imposition of court costs which were not orally imposed at the sentencing hearing. Relator argues the court costs were mandatory, therefore, their exclusion at the sentencing hearing makes the sentence void.

{¶3} On July 27, 1995, the journal entry containing Relator's sentence was filed. This entry contains the following, "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant pay the costs of this prosecution for which execution is hereby awarded." On August 29, 1995, the trial court issued a Nunc Pro Tunc entry granting Relator jail time credit. The August entry contains the same order regarding court costs.

{¶4} To be entitled to the issuance of a writ of mandamus, the Relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41, 324 N.E.2d 641, citing *State ex rel. National City Bank v. Bd. of Education* (1977) 520 Ohio St.2d 81, 369 N.E.2d 1200.

{¶5} The Supreme Court has discussed the inapplicability of extraordinary writs to situations where a defendant is challenging a sentence based upon the trial court's failure to orally advise the defendant of post release control but where the trial court did include the notification in the sentencing entry.

{¶6} The Court stated in *Patterson v. Ohio Adult Parole Auth.* 120 Ohio St.3d 311, 312, "Patterson had an adequate remedy by way of direct appeal from his sentence to raise his claim that he did not receive proper notification about post release control at his sentencing hearing. See, e.g., *Watkins v. Collins*, 111 Ohio St.3d 425, 2006-Ohio-5082, 857 N.E.2d 78, ¶ 45 ("The remedy for improper notification about post release control at the sentencing hearing is resentencing-not release from prison") and ¶ 53 ("habeas corpus is not available to contest any error in the sentencing entries, and petitioners have or had an adequate remedy by way of appeal to challenge the imposition of post release control"). We have never held that these claims can be raised by extraordinary writ when the sentencing entry includes post release control, however inartfully it might be phrased. *Id.*; cf. *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, 844 N.E.2d 301 (petitioner entitled to writ of habeas corpus because sentencing entry did not include post release control, and petitioner had completed journalized sentence); *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961 (claim of failure to properly notify offender of post release control at sentencing hearing raised in direct appeal from sentence imposing post release control)."

{¶7} While these cases specifically relate to the imposition of mandatory post release control, we find them to be instructive regarding the imposition of any mandatory sentencing term. Based upon the Supreme Court's rationale in these cases,

a sentencing entry containing the required mandatory term, which in this case is court costs, must be challenged by appeal.

{¶8} We have previously held, the appropriate forum for challenging court costs is by way of appeal from the sentencing entry; therefore, an adequate remedy at law exists for making such a challenge. See *State of Ohio ex rel. Biros v. Logan*, 2003 WL 22326666, *2 (Ohio App. 11 Dist.) ([T]he propriety of a decision to impose court costs on a convicted defendant can only be contested in a direct appeal from the sentencing judgment.). See *Wuescher v. Whitney* 2008 WL 142575, 1 (Ohio App. 5 Dist.).

{¶9} Because Relator's sentencing entry did contain an order imposing court costs, Relator has or had an adequate remedy at law by way of direct appeal. The existence of an adequate remedy at law precludes the issuance of the requested writ of mandamus. For this reason, Respondent's motion to dismiss is granted.

{¶10} WRIT DISMISSED.

{¶11} IT IS SO ORDERED.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

/S/ JOHN W. WISE

/S/ W. SCOTT GWIN

/S/ SHEILA G. FARMER

JUDGES

