

DUNNING, APPELLANT, v. THE STATE OF OHIO, APPELLEE.

[Cite as *Dunning v. State*, 105 Ohio St.3d 348, 2005-Ohio-1939.]

Criminal law—Sentencing—Retroactive application of State v. Comer, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, denied.

(No. 2004-1944 — Submitted April 13, 2005 — Decided May 11, 2005.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 84982.

Per Curiam.

{¶1} In 1999, the Cuyahoga County Court of Common Pleas convicted appellant, Daniel Dunning, of involuntary manslaughter, felonious assault, and a firearm specification and sentenced him to an aggregate prison term of 13 years.

{¶2} In July 2004, Dunning filed a petition in the Court of Appeals for Cuyahoga County for a writ of mandamus to compel appellee, the state of Ohio, to resentence him in accordance with our decision in *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, paragraphs one and two of the syllabus. The state moved to dismiss the petition.

{¶3} On October 14, 2004, the court of appeals granted the state’s motion and dismissed the petition.

{¶4} We affirm the judgment of the court of appeals. Dunning “is not entitled to the retroactive application of *Comer* to his convictions, which had become final before *Comer* was decided.” *State ex rel. Maxwell v. Spicer*, 104 Ohio St.3d 344, 2004-Ohio-6594, 819 N.E.2d 702, ¶ 5; *Ali v. State*, 104 Ohio St.3d 328, 2004-Ohio-6592, 819 N.E.2d 687, ¶ 6. Therefore, the court of appeals properly dismissed Dunning’s mandamus petition.

Judgment affirmed.

SUPREME COURT OF OHIO

MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON, O'CONNOR,
O'DONNELL and LANZINGER, JJ., concur.

Daniel Dunning, pro se.

William D. Mason, Cuyahoga County Prosecuting Attorney, and Mary H.
McGrath, Assistant Prosecuting Attorney, for appellee.
