

[Cite as *Wuescher v. Whitney*, 2008-Ohio-118.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JASON WUESCHER	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Relator	:	Hon. John W. Wise, J.
-vs-	:	Hon. Julie A. Edwards, J.
	:	
W. DUNCAN WHITNEY, JUDGE	:	CASE NO. 07CAD110064
	:	
Respondent	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Petition for Writ of Mandamus

JUDGMENT: WRIT DENIED

DATE OF JUDGMENT ENTRY: 1/15/2008

APPEARANCES:

For Relator – pro se:

JASON WUESCHER - #526-112
North Central Correctional Institution
670 Marion-Williamsport Road, E.
Marion, OH 43301-1812

Hoffman, P.J.,

{¶1} Relator has filed a Complaint for Writ of Mandamus requesting this Court vacate costs which were imposed by the trial court at the time of sentencing. Relator suggests he could not appeal the trial court's sentencing entry because it was not a final appealable order. He maintains the sentencing entry was not final because the trial court failed to include requisite findings to support the imposition of the court costs. We disagree.

{¶2} Relator was convicted of Trafficking in Drugs, a felony of the third degree, and Trafficking in Drugs, a felony of the fourth degree. He was sentenced to a period of three years on the first count and to a term of community control on the felony of the fourth degree. In addition, the court imposed various court costs.

{¶3} To be entitled to the issuance of a writ of mandamus, 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.

{¶4} 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.).

{¶5} Relator has not demonstrated the necessary elements for the issuance of a writ of mandamus. We find Relator has or had an adequate remedy at law by way of a direct appeal of his sentence, therefore, the writ will not issue.

{¶6} WRIT DENIED.

By: Hoffman, P.J.
Wise, J. and
Edwards concur.

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

HON. JULIE A. EDWARDS

