

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE, EX REL.,	:	JUDGES:
ERIC TUCKER	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. Julie A. Edwards, J.
Relator	:	Hon. Patricia A Delaney, J.
	:	
-vs-	:	
	:	
HON. FRANK G. FORCHIONE	:	Case No. 2009CA00240
STARK COUNTY COURT	:	
OF COMMON PLEAS	:	
	:	<u>OPINION</u>
	:	
Respondent	:	

CHARACTER OF PROCEEDING: Complaint for Writ of Mandamus

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: February 16, 2010

APPEARANCES:

For Relator

ERIC TUCKER 368-090
1001 Olivesburg Road
P. O. Box 8107
Mansfield, OH 44901-8107

For Respondent

JOHN D. FERRERO, JR.
Prosecuting Attorney
By: RONALD MARK CALDWELL
Assistant Prosecuting Attorney
110 Central Plaza South
Suite 510
Canton, OH 44702-1413

Farmer, P.J.

{¶1} Relator, Eric Thomas Tucker, 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 entry which was 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 did not include a mandatory term of post release control. The Complaint contains the following allegations, “10. Based on Judge Reinbold, not imposing mandatory post release control that is required by Ohio law, the sentencing hearing and judgment entry is unlawful and Judge Reinbold did not have the authority to ignore his statutory duty of imposing post release control that was required by statute. . .12. The Respondent had a clear legal duty to impose all mandatory sentencing statutes during the sentencing phase and judgment entry; meanwhile, the Appellant has a right to obtain a valid sentencing hearing and judgment entry.”

{¶3} On February 1, 1999, the journal entry containing Relator’s sentence was filed. This entry contains the following, “The Court has further notified the defendant that post release control is mandatory in this case up to a maximum of 5 years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code Section 2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control.” Relator has attached what purports to be the transcript from Relator’s sentencing hearing. In the transcript as provided, the trial court does not advise Relator of the possibility of the imposition of post release control.

{¶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.* (2008), 120 Ohio St.3d 311, 312, 898 N.E.2d 950, "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).”

Because Relator’s sentencing entry did contain the post release control notification, Relator has or had an adequate remedy at law by way of direct appeal to challenge the alleged failure of the trial court to orally advise Relator of post release control. 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.

{¶7} WRIT DISMISSED.

{¶8} COSTS TO RELATOR.

{¶9} IT IS SO ORDERED.

By Farmer, P.J.

Edwards, J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ Julie A. Edwards

s/ Patricia A. Delaney

JUDGES

