

[Cite as *State ex rel. Massey v. Stark Cty. Court of Common Pleas*, 2010-Ohio-231.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO EX REL. MICHAEL A.
MASSEY

Relator

JUDGES:

Hon. W. Scott Gwin, P. J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

-vs-

STARK COUNTY COURT OF
COMMON PLEAS, et al.

Respondents

Case No. 2009 CA 00227

OPINION

CHARACTER OF PROCEEDING:

Writ of Mandamus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

January 25, 2010

APPEARANCES:

For Relator

For Respondents

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Wise, J.

{¶1} Relator, Michael Anthony Massey, Sr., has filed a Complaint requesting the issuance of a writ of mandamus compelling the trial court to issue a sentencing entry which reflects Relator's plea to three felony counts. Respondent has filed a Reply to the Complaint and a Motion to Dismiss.

{¶2} The sole allegation raised in the Complaint is the trial court's entry of August 11, 2004 is void because it did not reflect Relator's plea of no contest to three felonies. Rather, Relator suggests the trial court's entry only references two felony convictions. In his Motion to Dismiss, Respondent in turn has advised this Court that he issued a Nunc Pro Tunc entry on August 19, 2004 which addressed all three felony convictions.

{¶3} Relator entered no contest pleas to one count of Rape, one count of Aggravated Burglary, and one count of Aggravated Robbery. The trial court sentenced Relator on all three counts to a term of five to twenty-five years on each count to be served concurrently. On August 11, 2004, the trial court issued a sentencing entry which contained sentences for the Rape and Aggravated Robbery convictions only. On August 19, 2004, the trial court issued a Nunc Pro Tunc entry which contained sentences for all three convictions.

{¶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 held, “Mandamus will not issue to compel an act that has already been performed.” *State ex rel. Scruggs v. Sadler*, 102 Ohio St.3d 160, 2004-Ohio-2054, 807 N.E.2d 357, ¶ 5. *State ex rel. Madsen v. Jones (2005)*, 106 Ohio St.3d 178, *179, 833 N.E.2d 291, * *292.

{¶6} Because the act requested by Relator has already been performed, by virtue of the August 19, 2004 judgment entry, the requested writ will not issue. For this reason, Respondent’s motion to dismiss is granted.

{¶7} MOTION TO DISMISS GRANTED.

{¶8} WRIT DISMISSED.

{¶9} IT IS SO ORDERED.

By: Wise, J.

Gwin, P. J., and

Hoffman, J., concur.

/S/ JOHN W. WISE_____

/S/ W. SCOTT GWIN_____

/S/ WILLIAM B. HOFFMAN_____

JUDGES

