

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio, ex rel. Marquise Jones

Court of Appeals No. S-11-024

Relator

v.

Judge Barbara J. Ansted

DECISION AND JUDGMENT

Respondent

Decided: July 25, 2011

* * * * *

Marquise Jones, pro se.

* * * * *

OSOWIK, J.

Relator, Marquise Jones, has filed a petition for a writ of mandamus against respondent, Judge Barbara J. Ansted, judge of the Sandusky County Court of Common Pleas. The underlying facts, taken from the trial court's record, are as follows. In 2008, appellant was convicted, following a jury trial, of six felony offenses¹ in connection with

¹Appellant was originally charged with 17 separate offenses.

an orchestrated, armed assault and robbery that took place in Fremont, Ohio. In its judgment entry of sentencing issued on October 28, 2008, the trial court stated that each of those six offenses carried a firearm specification, and sentenced appellant to serve a total of 21 years in prison. Relator asserts in his petition that he should have been sentenced separately for each of the six firearm specifications; however, the sentencing judgment entry stated that relator's 21-year sentence included "a MANDATORY term of THREE (3) YEARS for the firearm specification."

In support of his petition, relator argues that the sentencing order is not final and appealable because, pursuant to Crim.R. 32(C), he should have been separately sentenced for each of the firearm specifications attached to his six felony convictions. Relator now asks this court to issue a writ of mandamus and/or procedendo, pursuant to R.C. Chapter 2731, ordering respondent to issue a corrected "judgment entry of conviction and sentence that fully complies with Criminal Rule 32(C) and constitutes a final appealable order." Attached to relator's petition is a memorandum in support, an "Affidavit of Verity," an affidavit pursuant to R.C. 2969.25(A) stating that he has not filed any civil actions or an appeal from a civil action in the previous five years, an affidavit of indigency, the trial court's judgments of conviction and sentencing, and a portion of the transcript from his sentencing hearing held on October 27, 2008.

Relator also states that on March 14, 2011, he filed a motion asking respondent to issue a judgment entry in compliance with Crim.R. 32(C). In addition to the above

attachments, relator has attached to his petition a copy of a judgment entry issued by respondent on March 29, 2011, in which respondent stated:

"Upon consideration of the Motion and the Response filed by the State of Ohio, the court finds the Motion not well taken and is hereby denied for the reason that a firearm specification is merely a sentencing enhancement, not a separate offense that would require vacating the prior sentence."

Pursuant to Crim.R. 32(C), "[a] judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence. * * *" See, also, *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. (In a criminal case, a final, appealable order must have: "(1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court." *Id.* at syllabus.) In order to obtain a remedy for an allegedly improper order that lacks any of above-stated requirements, a defendant must first file a motion in the trial court seeking correction of the judgment entry. If such a request is refused, the defendant may seek to compel the trial court to act by filing an action for mandamus or procedendo. *State ex rel. Moore v. Krichbaum*, 7th Dist. No. 09 MA 201, 2010-Ohio-1541, ¶ 9, citing *Dunn v. Smith*, 119 Ohio St.3d 364, 2008-Ohio-4565, ¶ 8.

A writ of procedendo will not issue from a superior court to compel a lower court to make a specific ruling, or where an adequate remedy at law exists. *State ex rel. Lisboa v. Gold*, 8th Dist. No. 96164, 2011-Ohio-2666, ¶ 2, citing *State ex rel. Utley v. Abruzzo*

(1985), 17 Ohio St.3d 202, and *State ex rel. Hansen v. Reed* (1992), 63 Ohio St.3d 597.

Because we cannot compel respondent to make a specific finding that relator's sentence was improper, a writ of procedendo will not issue in this case. We will next consider whether relator is entitled to a writ of mandamus.

"A writ of mandamus is an order to a public officer, to perform an act which the law specifically enjoins as a duty resulting from his office. R.C. 2731.01. In order to grant a writ of mandamus, a court must find that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that the relator has no plain and adequate remedy at law." *State ex rel. Hodges v. Taft* (1992), 64 Ohio St.3d 1, 3, citing *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41.

R.C. 2929.14(D)(1)(b) states that "a trial court shall not impose more than one prison term for multiple firearm specifications if the specifications involve the same 'act or transaction.'" *State v. Young*, 2d Dist. No. 23642, 2011-Ohio-747, ¶ 53. "Same act or transaction does not have the same meaning as course of criminal conduct." *State v. Walker* (June 30, 2000), 2d Dist. No. 17678. For purposes of R.C. 2929.14(D)(1)(b), the phrase "means a series of continuous acts bound together by time, space and purpose, and directed toward a single objective." *State v. Young*, supra, at ¶ 54, quoting *State v. Walker*, supra.

Appellant does not claim that all of his convictions did not arise out of the "same act or transaction." Accordingly, we find no basis on which to conclude that respondent erred by merging the six firearm specifications for purposes of sentencing.

On consideration of the foregoing, we find that respondent is under no clear legal duty to do the act requested in relator's petition for mandamus. This mandamus action is dismissed at relator's costs.

It is so ordered.

WRIT DENIED.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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