

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

State of Ohio, ex rel. Kyle W. Blanton

Court of Appeals No. OT-12-005

Relator

v.

Judge Frederick C. Hany, II

DECISION AND JUDGMENT

Respondent

Decided: March 13, 2012

* * * * *

Kyle W. Blanton, pro se.

* * * * *

HANDWORK, J.

{¶ 1} This original action is before the court upon the complaint filed by relator, Kyle W. Blanton, for a writ of mandamus directing Hon. Frederick C. Hany II, judge of the Ottawa County Municipal Court, to vacate his August 22, 2011 judgment and conduct a hearing in open court with relator present to determine relator's counterclaim/motion to

dismiss filed August 6, 2011, and any proper motion to dismiss that might be filed by the state of Ohio pursuant to Crim.R. 48(A).

{¶ 2} On May 8, 2011, relator was charged in Ottawa County Municipal Court with one count of violating R.C. 2903.13(A), assault, to which he entered a not guilty plea. After the case was set for trial, the state moved for a continuance, which was granted. Relator asserts that the continuance was improperly granted and that his speedy trial rights were violated. The case was eventually dismissed on August 22, 2011, when the court granted the motion of the state of Ohio for leave to dismiss the complaint pursuant to Crim.R. 48(A) in anticipation of the case being submitted to the Ottawa County Grand Jury. Relator asserts the state of Ohio sought an indictment in retaliation against relator for not entering a guilty plea in the municipal court case. Appellant filed a counterclaim and motion to dismiss. An indictment was issued on August 29, 2011, against relator, and that case is still pending in the Ottawa County Court of Common Pleas.

{¶ 3} Relator appealed the dismissal of the municipal court case to this appellate court (6th Dist. No. OT-11-030). On November 29, 2011, this court dismissed the appeal on the ground that the order from which the appeal was taken was not a final, appealable order. That appeal has been subsequently reinstated. Relator also sought a further appeal to the Ohio Supreme Court on January 11, 2012.

{¶ 4} A writ of mandamus is an extraordinary writ and, therefore, is only available where the court finds "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 relator has no plain and adequate remedy at law." *State ex rel. Middletown Bd. of Edn. v. Butler Cty. Budget Comm.*, 31 Ohio St.3d 251, 253, 510 N.E.2d 383 (1987), quoting *State ex rel. Westchester Estates, Inc. v. Bacon*, 61 Ohio St.2d 42, 399 N.E. 2d 81 (1980), paragraph one of the syllabus. In the case before us, relator has an adequate remedy at law by way of appeal.

{¶ 5} Relator's request for a writ of mandamus is denied and this original action is dismissed. Relator is ordered to pay the costs of this action. The clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ denied.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, 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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.