

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

State of Ohio, ex rel.
Carlos G. Galloway, Jr.

Court of Appeals No. L-10-1132

Relator

v.

Lucas County Court of Common Pleas
and Judge Denise Ann Dartt

DECISION AND JUDGMENT

Respondents

Decided: April 11, 2011

* * * * *

Carlos G. Galloway, Jr., pro se.

Julia R. Bates, Lucas County Prosecuting Attorney, and
John A. Borell, Assistant Prosecuting Attorney, for respondents.

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SINGER, J.

{¶ 1} Relator, Carlos G. Galloway, Jr., filed a complaint for mandamus against respondents, the Lucas County Court of Common Pleas and Judge Denise Ann Dartt. Relator alleged that the court had failed to comply with Crim.R. 32(C) in the sentencing

judgment entries issued in case No. CR93-6941 and case No. CR94-6499. Respondents filed a motion to dismiss which the court denied, and then an answer, denying relator's allegations. Relator filed a motion for summary judgment and respondents opposed the motion. Relator filed a reply.

{¶ 2} Summary judgment may only be granted if "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of facts, if any, * * * show that there is no genuine issue as to any material fact" and, construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law." Civ.R. 56(C).

{¶ 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; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41.

{¶ 4} Relator first alleges that the court failed to comply with Crim.R. 32(C), either omitting the method of conviction or the proper sentence. We have reviewed the two judgment entries in each of the cases, and find that they comply with the requirements set forth in *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. Contrary to relator's allegations, each includes the following requisite *Baker* components: "(1) the guilty plea, jury verdict, or 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 the syllabus. Both judgment entries state that appellant was found guilty and convicted by a jury and both include sentences which pertain to the specific offenses for which he was convicted. Therefore, relator's arguments in his motion for summary judgment related to the *Baker* requirements are without merit.

{¶ 5} Relator also alleges that the court either failed to assess court costs (CR93-6941) or assessed such costs in the judgment entry but did not address the issue verbally at sentencing (CR94-6499). Relator argues that this omission or error also establishes that his initial judgments of conviction are not final and appealable, permitting him to seek a remedy by mandamus for resentencing and subsequent new appeal. This argument is also without merit.

{¶ 6} R.C. 2947.23 requires a court to assess costs against all convicted defendants. *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, ¶ 5. Nevertheless, the failure to inform a defendant of mandatory court costs at his sentencing hearing does not render a sentence void. *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, ¶ 22. The court noted that "[t]he civil nature of the imposition of court costs does not create the taint on the criminal sentence that the failure to inform a defendant of post release control does. Nor does the failure to inform a defendant orally of court costs affect another branch of government. It affects only the court and the defendant." *Id.* at ¶ 21.

{¶ 7} Likewise, the court's failure to address the mandatory issue of court costs at all, either at the sentencing hearing or in its judgment entry, does not constitute a void

judgment entry. *State v. Lukacs*, 188 Ohio App.3d 597, 2010-Ohio-2364, ¶ 69, citing R.C. 2947.23(A); *State v. Joseph*, supra; *State v. White*, supra.

{¶ 8} Rather, the appropriate forum for challenging court costs is by way of appeal from the sentencing entry. See *State ex rel. Biros v. Logan*, 11th Dist. No 2003-T-0016, 2003-Ohio-5425 (propriety of a decision to impose court costs on convicted defendant may only be contested in direct appeal from sentencing judgment.) See, also, *Wuescher v. Whitney*, 5th Dist. No. 07CAD110064, 2008-Ohio-118 (mandamus will not lie to challenge court's failure to assess court costs in judgment entry; proper remedy is direct appeal). Moreover, an action in mandamus may not be used to collaterally attack an order to impose court costs, where such issue could have been raised in a defendant's original direct appeal. *State ex rel. Biros*, supra, at ¶ 13. Therefore, mandamus will not issue to correct errors pertaining to the assessment of court costs, since an adequate remedy at law exists.

{¶ 9} In this case, the court's failure to assess court costs in case No. CR93-6941 and its assessment in case No. CR94-6499 was arguably error, but does not result in a void sentence. In the first case, any error was harmless, since no costs were assessed against appellant. In the second case, any error claimed should have been addressed on direct appeal. Therefore, relator's motion for summary judgment is not well-taken and is denied, since he has not demonstrated the necessary elements for the issuance of a writ of mandamus.

{¶ 10} Accordingly, we find relator's complaint for writ of mandamus not well-taken and it is denied. Court costs of this action are assessed to relator.

{¶ 11} To the Clerk: Manner of Service.

{¶ 12} Serve upon all parties in a manner prescribed by Civ.R. 5(B) notice of the judgment and its date of entry upon the journal.

WRIT DENIED.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.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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