

[Cite as *State ex rel. Hughley v. McMonagle*, 2009-Ohio-1259.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92713

**STATE OF OHIO, EX REL.,
KEVIN HUGHLEY**

RELATOR

vs.

C.C.C.P. JUDGE TIMOTHY MCMONAGLE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF MANDAMUS
MOTION NO. 418108
ORDER NO. 419217

RELEASE DATE: March 16, 2009

FOR RELATOR:

Kevin Hughley, pro se
Inmate No. 532-743
5900 B.I.S. Road
Lancaster, Ohio 43130

ATTORNEYS FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor

By: James Moss
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

COLLEEN CONWAY COONEY, A. J.:

Kevin Hughley has filed a complaint for a writ of mandamus, through which he seeks an order to compel Judge Timothy McMonagle “to re-sentence void remand re-sentence from remand order from appeals Case # 90323 that was inflicted on 12/22/08 to stop false imprisonment.” Judge McMonagle has filed a motion for summary judgment, which we grant for the following reasons.

This court, in *State v. Hughley*, Cuyahoga App. No. 90323, 2008-Ohio-6146, affirmed Hughley’s conviction for seven counts of forgery, six counts of uttering, and six counts of tampering with records, but reversed and remanded for resentencing with regard to the six counts of tampering with records. On December 24, 2008,

Judge McMonagle resentenced Hughley. On December 24, 2008, Hughley appealed Judge McMonagle's resentencing to this court.¹ On January 23, 2009, Hughley filed his complaint for a writ of mandamus.

Judge McMonagle is entitled to summary judgment as a matter of law. Mandamus will not issue where there exists a plain and adequate remedy in the ordinary course of the law. *State ex rel. Ullmann v. Hayes*, 103 Ohio St.3d 405, 2004-Ohio-5469, 816 N.E.2d 245. Since Hughley has filed an appeal with regard to Judge McMonagle's resentencing, this court is prevented from issuing a writ of mandamus. *State ex rel. Jaffal v. Calabrese*, 105 Ohio St.3d 440, 2005-Ohio-2591, 828 N.E.2d 107. In addition, any sentencing errors rendered by a court that possesses proper jurisdiction cannot be remedied by an extraordinary writ. *Majoros v. Collins* (1992), 64 Ohio St.3d 442, 596 N.E.2d 1038; *State ex rel. Corrigan v. Lawther* (1988), 39 Ohio St.3d 157, 529 N.E.2d 1377.

Accordingly, we grant Judge McMonagle's motion for summary judgment. Costs to Hughley. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Writ denied.

COLLEEN CONWAY COONEY,
ADMINISTRATIVE JUDGE

¹As of the date of this entry, Hughley's appeal of the resentencing remains pending. See *State v. Hughley*, Cuyahoga App. No. 92588.

KENNETH A. ROCCO, J., and
MARY EILEEN KILBANE, J., CONCUR