

SUPREME COURT OF OHIO

State ex rel. Roberts v. Marsh

2020-Ohio-1540 (Ohio 2020) · No. 2019-1469 · Decided April 22, 2020

SUMMARY

The Supreme Court of Ohio affirmed the dismissal as moot of Mallon Roberts’s petition for writs of mandamus and procedendo. Because the trial judge had issued a corrected sentencing entry, neither writ could compel an act that had already been performed, and Roberts could challenge the entry’s substance in a separate appeal.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, C.J.; Maureen O'Connor; Maureen E. Kennedy; Judith L. French; Patrick F. Fischer; Patrick DeWine; Michael P. Donnelly; Melody J. Stewart
JURISDICTION	Ohio
DECIDED	April 22, 2020
DOCKET	2019-1469
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal as of right from the First District Court of Appeals' dismissal of Roberts's original action for writs of procedendo and mandamus as moot.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Mallon Roberts v. Melba D. Marsh, Judge

TOPICS

- mootness
- appellate procedure
- remedies
- criminal procedure

PRACTICE AREAS

- Appellate procedure
- Extraordinary writs
- Criminal procedure

QUESTIONS PRESENTED

1. Whether the First District properly dismissed Roberts's mandamus and procedendo action as moot after Judge Marsh issued a corrected sentencing entry.
2. Whether Roberts could use the mandamus or procedendo action to challenge alleged substantive errors in the nunc pro tunc sentencing entry.

HOLDINGS

1. The action was moot because Judge Marsh had performed the act Roberts sought to compel by issuing a corrected sentencing entry constituting a final, appealable order.
2. Roberts could challenge the substance of the nunc pro tunc sentencing entry in an appeal from that entry, but the alleged errors did not warrant reversal of the dismissal of his moot original action.

KEY QUOTATIONS

“Neither procedendo nor mandamus will compel the performance of a duty that has already been performed.” (¶ 6)

FACTUAL BACKGROUND

Roberts was convicted of murder with a repeat-violent-offender specification and received consecutive prison sentences. After the First District determined that postrelease control had been improperly imposed, the trial court vacated that portion of the sentence. Following dismissal of an appeal because the sentencing entry did not contain all information required by Crim.R. 32(C) in a single document, Roberts filed an original action seeking a corrected final, appealable sentencing entry. Judge Marsh then issued a nunc pro tunc entry containing the requested correction.

PROCEDURAL HISTORY

Roberts sought writs of procedendo and mandamus to compel Judge Marsh to issue a corrected sentencing entry. While the action was pending, Judge Marsh issued a nunc pro tunc sentencing entry that supplied the requested relief. The First District dismissed the petition as moot, and the Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Roberts, 1st Dist. Hamilton No. C-050279, 2007-Ohio-856
- State v. Roberts, 1st Dist. Hamilton No. C-150528, 2017-Ohio-1060
- State v. Lester, 130 Ohio St. 3d 303, 2011-Ohio-5204, 958 N.E.2d 142
- State ex rel. Nelson v. Russo, 89 Ohio St. 3d 227, 729 N.E.2d 1181 (2000)
- State ex rel. Grove v. Nadel, 84 Ohio St. 3d 252, 703 N.E.2d 304 (1998)