

SUPREME COURT OF OHIO

State ex rel. Dawson v. Summit Cty. Court of Common Pleas

State ex rel. Dawson v. Summit Cty. Court of Common Pleas (Slip Opinion), 2016 Ohio 1597 (Ohio 2016) · No. 2015-0846 · Decided April 21, 2016

SUMMARY

The Supreme Court of Ohio affirmed dismissal of Larry D. Dawson’s petition for writs of mandamus and procedendo seeking resentencing and a final judgment of conviction. The court held that res judicata barred the claims because the finality of Dawson’s sentencing entry had already been addressed in an earlier appeal.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Pfeifer; O'Donnell; Lanzinger; Kennedy; French; O'Neill
JURISDICTION	Ohio
DECIDED	April 21, 2016
DOCKET	2015-0846
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dawson appealed the Ninth District Court of Appeals' dismissal of his petition for writs of mandamus and procedendo seeking resentencing and issuance of a final judgment of conviction and sentence.
STANDARD OF REVIEW	A relator seeking mandamus or procedendo must establish a clear legal right to relief, a clear legal duty on the respondent to provide it, and the lack of an adequate remedy in the ordinary course of law. Mandamus entitlement must be shown by clear and convincing evidence.
PRECEDENTIAL VALUE	published
PARTIES	Larry D. Dawson v. Summit County Court of Common Pleas, Judge Lynne S. Callahan

TOPICS

[criminal procedure](#)[post-conviction relief](#)[appellate procedure](#)[final judgment rule](#)[remedies](#)

PRACTICE AREAS

criminal procedure

appellate procedure

post-conviction relief

extraordinary writs

QUESTIONS PRESENTED

1. Whether Dawson's petition for writs of mandamus and procedendo seeking resentencing and a new final judgment was barred by res judicata.
2. Whether Dawson established a clear legal right and a clear legal duty supporting issuance of either writ.

HOLDINGS

1. A final judgment of conviction bars a represented defendant from raising in a later proceeding any defense or claimed lack of due process that was raised or could have been raised on direct appeal; Dawson's challenge to the finality and validity of his sentencing entry was therefore res judicata.
2. Dawson was not entitled to either writ because he could not demonstrate a clear legal right to resentencing or issuance of a new final judgment, and the previously resolved issue was barred by res judicata.

KEY QUOTATIONS

*“Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant * * * on an appeal from that judgment.”* (¶ 8)

FACTUAL BACKGROUND

Dawson was convicted in 1991 of aggravated murder, felonious assault, discharging a firearm into a habitation, and drug abuse, with firearm and physical-harm specifications. In 2012 and 2014, he challenged the sentencing entry, claiming it did not address all charges and did not constitute a final judgment under Crim.R. 32(C) and Sup.R. 7(A). His 2013 appeal had already determined that the sentencing entry was final and appealable and that the physical-harm specification did not authorize an additional prison sentence.

PROCEDURAL HISTORY

Dawson was convicted in 1991, and his convictions were affirmed on direct appeal. After unsuccessful motions concerning the validity and finality of his sentencing entry, including a 2013 appeal rejecting his claim that the entry was not final and appealable, he filed another motion under Crim.R. 32(C) and Sup.R. 7(A). The trial court denied the motion, and the Ninth District dismissed his mandamus and procedendo petition as barred by res judicata. The Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Dawson, 9th Dist. Summit No. 15483, 1992 WL 308549 (Oct. 21, 1992)
- State v. Dawson, 9th Dist. Summit No. 26500, 2013-Ohio-1767
- State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas, 72 Ohio St. 3d 461, 462, 650 N.E.2d 899 (1995)
- State ex rel. Crandall, Pheils & Wisniewski v. DeCessna, 73 Ohio St. 3d 180, 184, 652 N.E.2d 742 (1995)
- State ex rel. Waters v. Spaeth, 131 Ohio St. 3d 55, 2012-Ohio-69, 960 N.E.2d 452
- State v. Saxon, 109 Ohio St. 3d 176, 2006-Ohio-1245, 846 N.E.2d 824, ¶ 17
- State v. Perry, 10 Ohio St. 2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus

OPINION

State ex rel. Dawson v. Summit Cty. Court of Common Pleas (Slip Opinion)

2016 Ohio 1597

PER CURIAM.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Dawson v. Summit Cty. Court of Common Pleas, Slip Opinion No. 2016-Ohio-1597.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2016-OHIO-1597

THE STATE EX REL. DAWSON, APPELLANT, v. SUMMIT COUNTY COURT OF COMMON PLEAS ET AL., APPELLEES. [Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Dawson v. Summit Cty. Court of Common Pleas, Slip Opinion No. 2016-Ohio-1597.] Mandamus—Procedendo—Res judicata—Writs not available to compel issuance of final, appealable order when issue was already raised and ruled upon in earlier appeal. (No. 2015-0846—Submitted January 5, 2016—Decided April 21, 2016.) APPEAL from the Court of Appeals for Summit County, No. 27728. _____

Per Curiam. {¶ 1} We affirm the Ninth District Court of Appeals' judgment dismissing a petition for a writ of mandamus or procedendo. Relator-appellant, Larry D. Dawson, petitioned the court of appeals for a writ of mandamus and/or procedendo to compel respondents-appellees, the Summit County Court of Common Pleas and

SUPREME COURT OF OHIO

Judge Lynne S. Callahan, to resentence him and issue a final judgment of conviction and sentence. Because the same issue had already been addressed in the appeal of a motion for a new sentence, the court of appeals was correct to dismiss the complaint as res judicata. Facts and procedural

history {¶ 2} Dawson was convicted in 1991 of aggravated murder, felonious assault, discharging a firearm into a habitation, and drug abuse, along with two firearm specifications and a physical-harm specification. The convictions were appealed and affirmed in *State v. Dawson*, 9th Dist. Summit No. 15483, 1992 WL 308549 (Oct. 21, 1992). {¶ 3} In 2012, Dawson filed a motion for an oral hearing to correct a “void” sentence, claiming that the entry did not address all the charges. The motion was denied by Judge Callahan. Dawson appealed. *State v. Dawson*, 9th Dist. Summit No. 26500, 2013-Ohio-1767, appeal not accepted, 136 Ohio St. 3d 1495, 2013- Ohio-4140, 994 N.E.2d 464. Dawson raised one error, that the “trial court erred in not correcting his void sentencing entry because it is not a final, appealable order.” 2013-Ohio-1767, at ¶ 5. The court of appeals found that the original sentencing entry was a final, appealable order and that any challenge to the length of his imprisonment or sentence could have been raised on direct appeal. *Id.* at ¶ 12. The appellate court acknowledged that the sentencing entry did not impose a sentence for the physical-harm specification. But the appellate court specifically stated that “Dawson’s conviction of the physical harm specification did not permit the court to impose an additional prison sentence. * * * Dawson’s sentencing entry disposes of all charges against him, and his argument that his sentencing entry is not a final, appealable order is without merit.” *Id.* at ¶ 11. {¶ 4} In 2014, Dawson moved the court to issue a valid judgment in compliance with Crim.R. 32(C) and Sup.R. 7(A). Judge Callahan noted the 2 January Term, 2016 appellate decision in 2013 finding that Dawson’s sentencing entry was a final, appealable order and denied the motion. {¶ 5} Dawson then petitioned the Ninth District Court of Appeals for a writ of mandamus and/or procedendo ordering respondents to resentence him and issue a final judgment of conviction. The court noted that it had addressed and rejected this argument in 2013 and found that Dawson is not entitled to either writ. Dawson appealed. Analysis {¶ 6} To be entitled to a writ of procedendo, Dawson must show a clear legal right to require the court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St. 3d 461, 462, 650 N.E.2d 899 (1995). A writ of procedendo is proper when a court has refused to enter judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 73 Ohio St. 3d 180, 184, 652 N.E.2d 742 (1995). {¶ 7} To be entitled to a writ of mandamus, Dawson must establish a clear legal right to the requested relief, a clear legal duty on the part of Judge Callahan to provide it, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St. 3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6. Dawson must prove that he is entitled to the writ by clear and convincing evidence. *Id.* at ¶ 13. {¶ 8} Dawson cannot show a clear legal right to any relief. “Under the doctrine of *res judicata*, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due 3

process that was raised or could have been raised by the defendant * * * on an appeal from that judgment.” (Emphasis deleted.) State v. Saxon, 109 Ohio St. 3d 176, 2006-Ohio-1245, 846 N.E.2d 824, ¶ 17, quoting State v. Perry, 10 Ohio St. 2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus. {¶ 9} Dawson, who was represented by counsel during his trial and on the direct appeal from his convictions, could have raised the issues that he asserts now in that direct appeal. In addition, he raised them in 2013 in State v. Dawson, 9th Dist. Summit No. 26500, 2013-Ohio-1767. {¶ 10} The case is res judicata, and we affirm. Judgment affirmed.

PFEIFER, O’DONNELL, LANZINGER, KENNEDY, FRENCH, and O’NEILL, JJ.,
concur. O’CONNOR, C.J., not participating. _____ Larry D. Dawson, pro se.
Sherri Bevan Walsh, Summit County Prosecuting Attorney, and Colleen Sims, Assistant
Prosecuting Attorney, for appellees. _____ 4