

[Cite as *Whitman v. Saffold*, 2010-Ohio-2232.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94539**

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**WILLIAM WHITMAN**

RELATOR

vs.

**SHIRLEY STRICKLAND SAFFOLD**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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Writ of Procedendo  
Motion No. 430996  
Order No. 433587

**RELEASE DATE:** May 17, 2010

**FOR RELATOR**

William Whitman, pro se  
Inmate No. A581-451  
Richland Correctional Institution  
P. O. Box 8107  
1001 Olivesburg Road  
Mansfield, Ohio 44905

**ATTORNEYS FOR RESPONDENT**

William D. Mason  
Cuyahoga County Prosecutor

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

PATRICIA A. BLACKMON, J.:

{¶ 1} Relator, William Whitman, requests that this court compel respondent judge to issue a ruling on his “motion to dismiss violation of 90 day fast and speedy trial” in the underlying case<sup>1</sup> filed on November 6, 2009.

{¶ 2} Respondent has filed a motion for summary judgment attached to which is a copy of the journal entry memorializing the jury’s verdict and imposing sentence. The journal entry was received for filing by the clerk on February 2,

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<sup>1</sup> *State v. Whitman*, Cuyahoga County Court of Common Pleas Case No. CR-526494.

2010. Relator has not opposed the motion for summary judgment. Respondent argues that this action in procedendo is, therefore, moot. We agree.

{¶ 3} “It is well settled that a motion not ruled upon is implicitly deemed denied.”<sup>2</sup> Respondent has issued a journal entry reflecting the jury’s verdict and imposing sentence. As a consequence, Whitman’s request for relief in procedendo is moot. We also note that Whitman has appealed that judgment and his appeal is pending.

{¶ 4} Additionally, the complaint has several defects. Whitman did not comply with the requirement that he file an affidavit describing the actions he has filed in state and federal court during the last five years.<sup>3</sup> He also failed to file an affidavit specifying the details of the claim.<sup>4</sup> Each of these defects requires dismissal of the complaint.<sup>5</sup> Furthermore, Whitman has not included the

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<sup>2</sup> *Mosby v. Sanders*, Cuyahoga App. No. 92605, 2009-Ohio-6459, at ¶9, n.1 (citation deleted). See also *State v. Whitaker*, Cuyahoga App. No. 83824, 2004-Ohio-5016, ¶32.

<sup>3</sup> R.C. 2969.25.

<sup>4</sup> Loc.App.R. 45(B)(1)(a).

<sup>5</sup> *Morris v. Bur. of Sentence Computation*, Cuyahoga App. No. 89517, 2007-Ohio-1444.

addresses of the parties in the caption,<sup>6</sup> which may also be a ground for dismissal.<sup>7</sup>

{¶ 5} Accordingly, respondent's motion for summary judgment is granted. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal.<sup>8</sup>

Writ denied.

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PATRICIA A. BLACKMON, JUDGE

MARY EILEEN KILBANE, P.J., and  
MELODY J. STEWART, J., CONCUR

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<sup>6</sup> Civ.R. 10(A).

<sup>7</sup> *Clarke v. McFaul*, Cuyahoga App. No. 89447, 2007-Ohio-2520, at ¶5.

<sup>8</sup> Civ.R. 58(B).