

[Cite as *State ex rel. Peterson v. Cuyahoga Cty. Common Pleas Court Judge & Prosecutor*, 2010-Ohio-4501.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 95479

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**STATE OF OHIO, EX REL.  
ANTONIO PETERSON**

RELATOR

vs.

**CUYAHOGA COUNTY COMMON PLEAS  
COURT JUDGE AND PROSECUTOR**

RESPONDENTS

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**JUDGMENT:  
WRIT DENIED**

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Writ of Mandamus  
Motion No. 436793  
Order No. 437506

**RELEASED:** September 22, 2010

**FOR RELATOR**

Antonio R. Peterson, pro se  
Inmate No. 540-367  
Ohio State Penitentiary  
878 Coitsville-Hubbard Road  
Youngstown, Ohio 44505

## **ATTORNEYS FOR RESPONDENTS**

William D. Mason  
Cuyahoga County Prosecutor

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

KENNETH A. ROCCO, P.J.:

{¶ 1} On July 29, 2010, the relator, Antonio Peterson, commenced this mandamus action against the Cuyahoga County Prosecutor and Cuyahoga County Common Pleas Court Judge Eileen A. Gallagher.<sup>1</sup> Peterson alleges that in the underlying case, *State v. Peterson*, Cuyahoga County Common Pleas Court Case No. CR-500076, he filed a motion for new trial on the grounds of newly discovered evidence on March 6, 2010,<sup>2</sup> that the prosecutor never filed a

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<sup>1</sup> Peterson did not list Judge Eileen A. Gallagher in the caption, but referred to her in the complaint as the judge assigned to the underlying case.

<sup>2</sup> A review of the docket in the underlying case does not show any motion filed on March 6, 2010. However, it does show that Peterson filed a pro se "Motion seeking

brief in opposition, and that the judge never ruled on the motion. Thus, Peterson brought this mandamus action to compel the prosecutor to file a brief in opposition and to compel the judge to rule on the motion with findings of fact and conclusions of law.

{¶ 2} On August 20, 2010, the respondents filed a motion for summary judgment on the grounds of mootness. Attached to this dispositive motion is a certified copy of an August 5, 2010 journal entry that reads: “Motion seeking notice of plain error filed 3/5/10 is overruled.” Peterson never filed a response to the respondents’ motion. The ruling on the only motion filed in the underlying case during the subject period of time renders this mandamus action moot. The prosecutor has no duty to file a brief in opposition to a motion that the court has resolved. The respondent judge has fulfilled her duty to rule on the motion, and Peterson has received his requested relief, a ruling on his motion.<sup>3</sup> Peterson did not establish any duty to include findings of fact and conclusions of law in a ruling for either a motion for new trial or motion seeking notice of plain error. Generally, findings of fact and conclusions of law are not required for

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notice of plain error pursuant to Crim. R. 52(B)” on March 5, 2010. The docket shows that this is the only motion filed in early 2010.

<sup>3</sup>The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas* (1992), 83 Ohio App.3d 684, 615 N.E.2d 689 and *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914.

resolving motions. *State ex rel. Jefferson v. Russo*, Cuyahoga App. No. 90682, 2008-Ohio-135 and *State ex rel. Ali v. McMonagle*, Cuyahoga App. No. 95059, 2010-Ohio-3514.

{¶ 3} Additionally, the relator failed to support his complaint with an affidavit “specifying the details of the claim” as required by Loc.R. 45(B)(1)(a). *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077 and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶ 4} Relator also did not comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. This also is sufficient reason to deny the mandamus, deny indigency status, and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842 and *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420.

{¶ 5} Accordingly, this court grants the respondents’ motion for summary judgment and denies Peterson’s application for a writ of mandamus. Relator to pay costs. This court directs the clerk to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ denied.

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KENNETH A. ROCCO, PRESIDING JUDGE

CHRISTINE T. MCMONAGLE, J., and  
COLLEEN CONWAY COONEY, J., CONCUR