

[Cite as *State ex rel. Gilbert v. Cuyahoga Cty. Court of Common Pleas*, 2010-Ohio-5255.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95500

**STATE OF OHIO, EX REL.
LAURICE GILBERT**

RELATOR

vs.

**CUYAHOGA COUNTY COURT
OF COMMON PLEAS**

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 437095
Order No. 438437

RELEASE DATE: October 27, 2010

FOR RELATOR

Laurice Gilbert, pro se
Inmate No. 534-161
Mansfield Correctional Institution
P.O. Box 788
Mansfield, Ohio 44901

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Relator requests that this court compel respondent judge to comply with the mandate of this court's February 5, 2009 decision in *State v. Gilbert*, Cuyahoga App. No. 90615, 2009-Ohio-463, remanding *State v. Gilbert*, Cuyahoga Cty. Court of Common Pleas Case No. CR-487765, to the court of common pleas. Gilbert contends that the court of common pleas has failed to resentence him as required by Case No. 90615. The Supreme Court of Ohio affirmed this court's judgment in Case No. 90615 and remanded the case to this court in *State v. Gilbert*, 124 Ohio St.3d 119, 2009-Ohio-6543, 919 N.E.2d 737.

{¶ 2} Respondent has filed a motion for summary judgment, attached to which is a copy of a journal entry issued by respondent and received for filing by the clerk on August 31, 2010, in which respondent issued a newly revised sentencing entry. Relator has not opposed the motion. Respondent argues that this action in mandamus is, therefore, moot. We agree.

{¶ 3} Accordingly, respondent's motion for summary judgment is granted. Respondent to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ denied.

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, P.J., and
ANN DYKE, J., CONCUR