

[Cite as *State ex rel. Ellis v. Burnside*, 2010-Ohio-528.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94448

**STATE OF OHIO, EX REL.
WILLIAM ELLIS**

RELATOR

vs.

JUDGE JANET R. BURNSIDE

RESPONDENT

**JUDGMENT:
WRIT DISMISSED**

Writ of Procedendo
Motion No. 430677
Order No. 430790

RELEASE DATE: February 16, 2010

FOR RELATOR

William W. Ellis, pro se
Inmate No. 543-111
Mansfield Correctional Inst.
P.O. Box 788
Mansfield, Ohio 44901-0788

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

Judge Larry A. Jones:

{¶ 1} On December 30, 2009, relator William Ellis commenced this procedendo action against Judge Janet Burnside asking this court to order Judge Burnside to issue a nunc pro tunc entry granting him forma pauperis status so that Ellis may be able to appeal the denial of his post-trial conviction petition. On January 29, 2010, Judge Burnside, through the Cuyahoga County Prosecutor's office, filed a motion to dismiss. For the following reasons, we grant the motion to dismiss.

{¶ 2} Initially we note that the petition is defective since it failed to list the addresses of the parties as required by Civ.R. 10(A). The Supreme Court of

Ohio has ruled that procedural deficiencies are sufficient reason for dismissal. *State ex rel. Sherrills v. The State of Ohio* (2001), 91 Ohio St.3d 133, 742 N.E.2d 651. See also *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *Martin v. Woods*, 121 Ohio St.3d 609, 2009-Ohio-1928, 906 N.E.2d 1113.

{¶ 3} Notwithstanding the above, procedendo is appropriate when a court has either refused to render judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Watkins v. Eighth District Court of Appeals*, 82 Ohio St.3d 532, 1998-Ohio-190, 696 N.E.2d 1079. Moreover, procedendo is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not be used in doubtful cases. *Chokel v. Celebrezze* (Dec. 19, 2000), Cuyahoga App. No. 78355. Furthermore, the existence of an adequate remedy at law, whether relator used the remedy or not, precludes the issuance of the writ. *State ex rel. Utley v. Abruzzo* (1985), 17 Ohio St.3d 202, 478 N.E.2d 789; *State ex rel. Hansen v. Reed* (1992), 63 Ohio St.3d 597, 589 N.E.2d 1324.

{¶ 4} In this matter, we find that Ellis possessed an adequate remedy at law. As argued by Judge Burnside, Ellis possessed the ability to submit an affidavit to this court stating that he is unable to secure the costs of his appeal. See Loc.R. 3(A)(1). In fact, a review of the docket indicates that Ellis did file an

appeal and an affidavit of indigency with this court.¹ Accordingly, the availability of an adequate remedy at law precludes this court from granting the writ.

{¶ 5} Accordingly, we grant respondent's motion to dismiss. Relator to bear costs. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Writ Dismissed.

LARRY A. JONES, JUDGE

KENNETH A. ROCCO, P.J., and
MARY EILEEN KILBANE, J., CONCUR

¹ Ellis filed his appeal and affidavit of indigency in Case No. 94374. However, this court dismissed Ellis's appeal on January 6, 2010 because it was untimely.