

[Cite as *State ex rel. Powers v. Griffin*, 2016-Ohio-7229.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 104546

---

**STATE OF OHIO, EX REL.  
CESAR POWERS**

RELATOR

vs.

**BURT W. GRIFFIN, JUDGE**

RESPONDENT

---

**JUDGMENT:  
WRIT DENIED**

---

Writ of Mandamus  
Motion No. 497746  
Order No. 499961

**RELEASE DATE:** September 30, 2016

**FOR RELATOR**

Cesar Powers, pro se  
Inmate No. A483761  
Grafton Correctional Institution  
2500 South Avon Belden Road  
Grafton, Ohio 44044

**ATTORNEYS FOR RESPONDENT**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
By: James E. Moss  
Assistant County Prosecutor  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

TIM McCORMACK, P.J.:

{¶1} Cesar Powers has filed a petition for a writ of mandamus. Powers seeks an order from this court that requires respondent to render a ruling with regard to a motion to notice plain error and correct a manifest miscarriage of justice filed in *State v. Powers*, Cuyahoga C.P. No. CR-04-450568. Respondent filed a motion for summary judgment, which we grant.

{¶2} Judge Donnelly's motion for summary judgment includes a copy of a judgment, journalized on June 28, 2016, which demonstrates that a ruling has been issued with regard to the motion. Thus, Powers's request for a writ of mandamus is moot. *State ex rel. Fontanella v. Kontos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220; *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459. Powers's contention that the order is not final or appealable is without merit. Powers claims that the order is not final because it denies "Defendant's Crim.R. 52(B) motion to notice plain error and correct manifest miscarriage of justice pursuant to Crim.R. 43(A) filed on *May 28, 2016*." (Emphasis added.) He alleges that no motion was filed on that date. The docket reflects that Powers's motion to notice plain error was filed and journalized on May 28, 2015. While the June 28, 2016 order reflects the denial of the motion dated on May 28, 2016, this is an obvious clerical error. The procedure for correcting this obvious mistake would be through a nunc pro tunc entry, which would relate back to the original entry and would not alter the time for appeal. *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 19. Further, the court did not

enter two separate journal entries but rather issued an order referring to the court’s journal entry. The entry is signed and journalized by the clerk. *See State ex rel. Caldwell v. Gallagher*, 8th Dist. Cuyahoga No. 98317, 2012-Ohio-4608, ¶ 7 (“the court memorializes its decisions on the journal and the content of the \* \* \* journal entry — not the reference to the entry on the docket — reflects the complete substance of the court’s judgment. Indeed, the docket entry includes ‘OSJ,’ meaning ‘order see journal,’ referring the reader directly to the court’s journal”). The trial court has discharged its duty by ruling on Powers’s motion.

{¶3} Accordingly, we grant Judge Donnelly’s motion for summary judgment. Costs to Judge Donnelly. Costs waived. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).\_

{¶4} Writ denied.

TIM McCORMACK, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and  
ANITA LASTER MAYS, J., CONCUR