

[Cite as *State ex rel. Peterson v. McClelland*, 2017-Ohio-9026.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106188

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**STATE OF OHIO, EX REL.  
DAMIEN L. PETERSON**

RELATOR

vs.

**JUDGE ROBERT C. McCLELLAND**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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Writ of Procedendo  
Motion No. 510671  
Order No. 511716

**RELEASE DATE:** December 8, 2017

**FOR RELATOR**

Damien L. Peterson, pro se  
Inmate No. 503884  
Richland Correctional Institution  
1001 Olivesburg Road  
Mansfield, Ohio 44901

**ATTORNEYS FOR RESPONDENT**

Michael C. O'Malley  
Cuyahoga County Prosecutor  
By: James E. Moss  
Assistant County Prosecutor  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

MARY J. BOYLE, P.J.:

{¶1} Damien L. Peterson has filed a complaint for a writ of procedendo through which he seeks an order that requires Judge Robert C. McClelland to issue a ruling with regard to a “motion to vacate sentence for lack of jurisdiction,” that was filed in *State v. Peterson*, Cuyahoga C.P. No. CR-05-471307. Peterson also seeks an order from this court that requires Judge McClelland “to comply with the order and mandate of the Eighth District Court of Appeals” rendered in *State v. Peterson*, 8th Dist. Cuyahoga No. 101727, 2015-Ohio-1152. Judge McClelland has filed a motion for summary judgment that is granted for the following reasons.

{¶2} In order for this court to issue a writ of procedendo, Peterson must demonstrate that he possesses a clear legal right to the relief requested and that there exists no adequate remedy in the ordinary course of the law. *State ex rel. Brown v. Shoemaker*, 38 Ohio St.3d 344, 528 N.E.2d 188 (1983). Peterson must also demonstrate that Judge McClelland possesses a clear legal duty, which requires him to proceed to judgment. *State ex rel. Cochran v. Quillin*, 20 Ohio St.2d 6, 251 N.E.2d 607 (1969). Finally, a writ of procedendo is appropriate when a court has refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Doe v. Tracy*, 51 Ohio App.3d 198, 555 N.E.2d 674 (12th Dist.1988).

{¶3} Attached to Judge McClelland's motion for summary judgment is an exhibit that demonstrates a ruling has been rendered with regard to the motion to vacate sentence. On September 25, 2017, the motion to vacate was denied.

{¶4} In addition, a review of the docket maintained in CR-05-471307 clearly demonstrates that the mandate of this court, that required Judge McClelland to make findings as required by R.C. 2929.20(J) prior to granting judicial release, is moot. On July 22, 2015, Judge McClelland issued a journal entry that provided that:

The order of the court of appeals [in Appeal No. 101727] has been rendered moot. Defendant [Peterson] violated the terms for his judicial release and was sentenced to serve the remainder of his prison sentence.

{¶5} Thus, Peterson's complaint for a writ of procedendo is moot as it relates to the motion to vacate and the request for Judge McClelland to follow the mandate of this court rendered in Appeal No. 101727. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723; *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983). *Henderson v. Saffold*, 8th Dist. Cuyahoga No. 100406, 2014-Ohio-306.

{¶6} Accordingly, we grant Judge McClelland's motion for summary judgment. 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).

{¶7} Writ denied.

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