

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.,	:	JUDGES:
BELINDA RIFE ANELLO	:	
	:	
Relator	:	Hon. John W. Wise, P.J.
-vs-	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
	:	
JUDGE MARY A. FALVEY	:	
	:	
Respondent	:	CASE NO. 2008CA00059
	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Petition for Writ of Mandamus

JUDGMENT: WRIT DENIED

DATE OF JUDGMENT ENTRY: June 9, 2008

APPEARANCES:

For Relator:

NICHOLAS SWYRYDENKO
Suite 105
1000 S. Cleveland-Massillon Road
Akron, OH 44333

For Respondent:

GABRIEL M. WILDMAN
Assistant Prosecutor
218 Cleveland Avenue, S.W.
Canton, OH 44702

Wise, P.J.,

{¶1} Relator has filed a Petition for Writ of Mandamus requesting a writ be issued requiring Respondent issue Findings of Fact and Conclusions of Law in support of the trial court's ruling on Relator's Motion for Post-Conviction Relief. Respondent has filed a motion to dismiss on the basis municipal courts lack jurisdiction to entertain motions for post-conviction relief. Relator has not filed a response to the motion to dismiss.

{¶2} On November 13, 2006, Relator was convicted by a jury of two counts of Cruelty to Animals, misdemeanors of the second degree, in the Canton Municipal Court. Relator appealed her conviction to this Court wherein her conviction was affirmed. The Supreme Court dismissed Relator's appeal. Relator filed a motion for post-conviction relief while her case was pending before the Supreme Court. Respondent issued a ruling on Relator's motion for post-conviction relief which stated, "Defendant's petition for post-conviction relief and request for evidentiary hearing is overruled."

{¶3} Relator relies on our holding in *State ex rel. Baldwin v. Reinbold*, 2008-Ohio-837 which stands for the proposition that timely filed motions for post-conviction relief must contain Findings of Fact and Conclusions of Law. Inherent in this holding is the principle that a petition cannot be considered timely filed if the court in which it is filed lacks jurisdiction to entertain the motion.

{¶4} The Supreme Court has clearly stated municipal courts lack jurisdiction to hear motions for post-conviction relief, "[W]e hold that a municipal court is without jurisdiction to review a petition for post-conviction relief filed pursuant to R.C. 2953.21." *State v. Cowan*, 101 Ohio St.3d 372, 375, 805 N.E.2d 1085, 1089. A review of

Relator's petition for post-conviction relief reveals a petition which was filed pursuant to R.C. 2953.21, therefore, Respondent was without jurisdiction to review the petition. Because Respondent lacked jurisdiction to review the petition, it necessarily follows that Respondent is not required to issue Findings of Fact and Conclusions of Law. For these reasons, the Petition for Writ of Mandamus is denied.

{¶5} WRIT DENIED.

{¶6} COSTS TO RELATOR.

By: Wise, P.J.
Edwards, J. and
Delaney, J. concur

/S/ JOHN W. WISE
HON. JOHN W. WISE

/S/ JULIE A. EDWARDS
HON. JULIE A. EDWARDS

/S/ PATRICIA A. DELANEY
HON. PATRICIA A. DELANEY

[Cite as *State ex rel. Anello v. Falvey*, 2008-Ohio-2940.]

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For the reasons stated in the Memorandum-Opinion on file, Relator’s Writ of Mandamus is hereby denied. Costs taxed to Relator.

HON. JOHN W. WISE

HON. JULIE A. EDWARDS

HON. PATRICIA A. DELANEY