

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio, ex rel. Darek Lathan

Court of Appeals No. L-10-1043

Relator

v.

Hon. James D. Jensen

DECISION AND JUDGMENT

Respondent

Decided: August 12, 2010

* * * * *

Darek Lathan, pro se.

Julia R. Bates, Lucas County Prosecuting Attorney, and
John A. Borell, Assistant Prosecuting Attorney, for respondent.

* * * * *

COSME, J.

{¶ 1} Relator, Darek Lathan, filed a complaint for writ of procedendo, requesting that this court order respondent, Judge James Jensen, of the Lucas County Court of Common Pleas, to rule on three motions which had been pending for several months, specifically: "Civil R. 60(B) Relief from Judgment"; "Immediate Remand"; and

"Motion for Re-sentencing Crim.R. 47." Respondent initially filed a motion to dismiss based upon failure to comply with R.C. 2969.25, which we denied, pursuant to *State ex rel. Wickensimer v. Bartleson*, 123 Ohio St.3d 154, 2009-Ohio-4695.

{¶ 2} Respondent now files a motion for summary judgment, stating that he has ruled on all pending motions and relator's original action is now moot. The standard of review of a grant or denial of summary judgment is the same for both a trial court and an appellate court. *Lorain Natl. Bank v. Saratoga Apts.* (1989), 61 Ohio App.3d 127, 129. Summary judgment will be granted if "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of facts, if any, * * * show that there is no genuine issue as to any material fact" and, "construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law." Civ.R. 56(C).

{¶ 3} In this case, respondent has provided documentation that he has now ruled on the three motions. Respondent denied the relief sought by relator in the first two "motions," but granted relator's motion for re-sentencing and vacated his sentences, pursuant to *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462. Relator does not dispute that he was, in fact, re-sentenced on May 19, 2010.

{¶ 4} We note that relator has repeatedly included complaints or information which are irrelevant to the requested relief in his application for writ of procedendo. Although a writ of procedendo may be used to compel a ruling, it does not guarantee a

ruling which is favorable to relator. Any issues other than respondent's ruling on the three motions designated by relator are beyond the scope of this original action.

{¶ 5} For the foregoing reasons respondent's motion for summary judgment is granted. All other pending motions are moot. Accordingly, relator's application for writ of procedendo is found not well-taken and is denied. Costs assessed to relator.

{¶ 6} Pursuant to Civ.R. 58(B), the clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

{¶ 7} It is so ordered.

WRIT DENIED.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.