

**THE STATE EX REL. BORTOLI, APPELLANT, v. DINKELACKER, JUDGE,
APPELLEE.**

[Cite as *State ex rel. Bortoli v. Dinkelacker*,
105 Ohio St.3d 133, 2005-Ohio-779.]

*Criminal law – Motion to vacate guilty plea – Procedendo will not issue to
compel performance of act already performed.*

(No. 2004-1473 — Submitted February 16, 2005 — Decided March 16, 2005.)

APPEAL from the Court of Appeals for Hamilton County, No. C-040486.

Per Curiam.

{¶ 1} On July 30, 2004, appellant, Barry Bortoli, filed a complaint in the Court of Appeals for Hamilton County. Bortoli requested a writ of procedendo to compel appellee, Judge Patrick Dinkelacker of the Hamilton County Court of Common Pleas, to rule on Bortoli's November 21, 2003 motion to vacate his guilty plea. Judge Dinkelacker moved to dismiss Bortoli's complaint because he had already entered an order denying the motion on December 18, 2003.

{¶ 2} On August 26, 2004, the court of appeals granted the judge's motion and dismissed the complaint.

{¶ 3} We affirm the judgment of the court of appeals. A writ of procedendo will not issue to compel the performance of a duty that has already been performed. *State ex rel. Howard v. Skow*, 102 Ohio St.3d 423, 2004-Ohio-3652, 811 N.E.2d 1128, ¶ 9. And insofar as Bortoli claims that he did not receive sufficient notice of Judge Dinkelacker's entry denying Bortoli's motion to vacate his guilty plea, he has or had adequate remedies by delayed appeal and motion for relief from judgment to raise this claim. *State ex rel. Ahmed v. Costine*, 103 Ohio St.3d 166, 2004-Ohio-4756, 814 N.E.2d 865, ¶ 5.

SUPREME COURT OF OHIO

Judgment affirmed.

MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON, O'CONNOR,
O'DONNELL and LANZINGER, JJ., concur.

Barry Bortoli, pro se.

Michael K. Allen, Hamilton County Prosecuting Attorney, and James
Michael Keeling, Assistant Prosecuting Attorney, for appellee.
