

respondent has ruled on the petition for postconviction relief that is the subject of this action. Therefore, the magistrate issued an order converting respondent's motion to dismiss to a motion for summary judgment. Although given the opportunity, relator failed to respond to respondent's motion for summary judgment. The magistrate has recommended that we grant respondent's motion for summary judgment because mandamus does not lie to compel an act that has already been performed.

{¶ 3} Relator did not file an objection to the magistrate's decision.

{¶ 4} Finding no error of law or other defect on the face of the magistrate's decision, we adopt the decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we grant respondent's motion for summary judgment.

*Motion for summary judgment granted;
writ of mandamus denied.*

TYACK and HORTON, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

[State ex rel.] Daniel Teitelbaum,	:	
	:	
Relator,	:	
	:	
v.	:	No. 16AP-180
	:	
Judge Charles A. Schneider,	:	(REGULAR CALENDAR)
	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on May 10, 2016

Daniel Teitelbaum, pro se.

*Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,
for respondent.*

**IN MANDAMUS
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

{¶ 5} In this original action, relator, Daniel Teitelbaum, an inmate of the North Central Correctional Complex ("NCCC"), requests a writ of mandamus or procedendo ordering respondent, the Honorable Charles A. Schneider, a judge of the Franklin County Court of Common Pleas, to rule on his petition for postconviction relief filed on July 16, 2015 in the common pleas court in case No. 11CR-6440.

Findings of Fact:

{¶ 6} 1. On March 10, 2016, relator, an NCCC inmate, filed this original action against respondent. In his complaint, relator requests a writ of mandamus or procedendo ordering respondent to rule on his petition for postconviction relief filed on July 16, 2015 in the common pleas court in case No. 11CR-6440.

{¶ 7} 2. On April 12, 2016, respondent filed a motion to dismiss. In support, respondent submitted a copy of his decision and entry filed in the common pleas court on March 21, 2016 in case No. 11CR-6440.

{¶ 8} 3. On April 13, 2016, the magistrate issued an order converting respondent's motion to dismiss to one for summary judgment.

{¶ 9} 4. Also on April 13, 2016, the magistrate issued notice that respondent's motion for summary judgment is set for submission to the magistrate on May 3, 2016.

{¶ 10} 5. Relator has not responded to the magistrate's April 13, 2016 notice of summary judgment.

Conclusions of Law:

{¶ 11} It is the magistrate's decision that this court grant respondent's motion for summary judgment.

{¶ 12} In this original action, relator seeks a writ of mandamus or procedendo ordering respondent to rule on his July 16, 2015 petition for postconviction relief. Respondent has now ruled on the petition.

{¶ 13} Mandamus does not lie to compel an act that has already been performed. *State ex rel. Scruggs v. Sadler*, 102 Ohio St.3d 160, 2004-Ohio-2054.

{¶ 14} Procedendo will not compel the performance of a duty that has already been performed. *State ex rel. Walker v. Koch*, 98 Ohio St.3d 295, 2003-Ohio-856, ¶ 14.

{¶ 15} Summary judgment is appropriate when the movant demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, said party being entitled to have the evidence construed most strongly in his favor. *Turner v. Turner*, 67 Ohio St.3d 337, 339-40 (1993); *Bostic v. Connor*, 37 Ohio St.3d 144, 146 (1988); *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978). The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115 (1988).

{¶ 16} Clearly, respondent is entitled to judgment as a matter of law.

{¶ 17} Accordingly, it is the magistrate's decision that this court grant respondent's motion for summary judgment.

/S/ MAGISTRATE
KENNETH W. MACKE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).