

[Cite as *Smith v. Synenberg*, 2009-Ohio-3745.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**No. 93452**

---

**DARNELL R. SMITH**

RELATOR

vs.

**JUDGE JOAN SYNENBERG**

RESPONDENT

---

**JUDGMENT:  
WRIT DENIED**

---

WRIT OF PROCEDENDO  
MOTION NO. 423795  
ORDER NO. 424279

**RELEASE DATE:** July 29, 2009

**FOR RELATOR**

Darnell R. Smith, pro se  
Inmate No. 463-783  
Lake Erie Correctional Inst.  
P.O. Box 8000  
Conneaut, Ohio 44030

**ATTORNEY FOR RESPONDENT**

William D. Mason  
Cuyahoga County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

PATRICIA A. BLACKMON, P.J.:

{¶ 1} On June 12, 2009, relator Darnell Smith commenced this procedendo action against respondent Judge Joan Synenberg to compel her to rule on his motion for void judgment and conviction relief in *State v. Smith*, Cuyahoga County Court of Common Pleas, Case Nos. CR-443109, CR-437512 and CR-434529 which was filed on December 18, 2008. On July 2, 2009, Judge Synenberg, through the Cuyahoga County Prosecutor's office, filed a motion for summary judgment. For the following reasons, we grant the motion for summary judgment.

{¶ 2} Initially we find that the petition for a writ of procedendo is fatally defective since it is improperly captioned. A petition for a writ must be brought in the

name of the state, on relation of the person applying. Smith's failure to properly caption his petition constitutes sufficient reason for dismissal.<sup>1</sup>

{¶ 3} Nevertheless, attached to the motion for summary judgment is a copy of Judge Synenberg's order denying Smith's motion. Thus, Smith's request for a writ of procedendo is moot.<sup>2</sup>

{¶ 4} Accordingly, we grant the motion for summary judgment. Costs to respondent. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ denied.

---

PATRICIA A. BLACKMON, PRESIDING JUDGE

MARY J. BOYLE, J., and  
LARRY A. JONES, J., CONCUR

---

<sup>1</sup> *Allen v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Judge Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

<sup>2</sup> *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163; *State ex rel. Jerningham v. Cuyahoga County Court of Common Pleas* (1996), 74 Ohio St.3d 278, 658 N.E.2d 723.