

[Cite as *State ex rel. Mack v. Ambrose*, 2009-Ohio-3746.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93454

**STATE OF OHIO, EX REL.,
COLUMBIA C. MACK**

RELATOR

vs.

JUDGE DICK AMBROSE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF PROCEDENDO
MOTION NO. 423853
ORDER NO. 423678

RELEASE DATE: July 27, 2009

FOR RELATOR

Columbia Mack, pro se
Inmate No. 563-632
Madison Correctional Inst.
P.O. Box 740
London, Ohio 43140-0740

ATTORNEYS FOR RESPONDENT

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

KENNETH A. ROCCO, P.J.:

{¶ 1} Columbia C. Mack has filed a complaint for a writ of procedendo. Mack seeks an order from this court, which requires Judge Dick Ambrose to render findings of fact in support of the denial of a motion to discharge for failure to comply with the speedy trial provisions of R.C. 2945.71. For the following reasons, we grant Judge Ambrose's motion for summary judgment.

{¶ 2} Initially, we find that Mack has failed to comply with R.C. 2969.25, which requires the attachment of an affidavit to the complaint for a writ of procedendo that describes each civil action or appeal filed within the previous five years in any state or federal court. Mack's failure to comply with R.C. 2969.25 warrants the dismissal of the complaint for a writ of procedendo. *State*

ex rel. Zanders v. Ohio Parole Bd., 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. It must also be noted that Mack has failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that his complaint for a writ of procedendo must be supported by an affidavit that specifies the details of the claim. *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 3} Finally, the Supreme Court of Ohio has established that a trial court does not possess a duty to issue findings of fact when a request for such findings has not been timely made by a defendant.

{¶ 4} "Crim.R. 12(E) provides, in pertinent part, that '[w]here factual issues are involved in determining a motion, the court shall state its essential findings on the record.' 'A trial court must, upon the defendant's request, state essential findings of fact in support of its denial of a motion to discharge for failure to comply with the speedy trial provisions of R.C. 2945.71.' *Bryan v. Knapp* (1986), 21 Ohio St.3d 64, 65, 21 OBR 363, 364, 488 N.E.2d 142, 143. But for a court to have a duty to issue findings of fact, there must be a request from the defendant. No request for such findings was made by Brown's trial counsel. In *State v. Benner* (1988), 40 Ohio St.3d 301, 317-318, 533 N.E.2d 701, 718, this court stated the following:

{¶ 5} " '[I]n order to invoke the rule [Crim.R. 12(E)], the defendant must request that the court state its essential findings of fact in support of its denial of a

motion. See *Bryan v. Knapp* (1986), 21 Ohio St.3d 64, 21 OBR 363, 488 N.E.2d 142.' " *State v. Brown*, 64 Ohio St.3d 476, 1992-Ohio-96, 597 N.E.2d 97, at 481.

{¶ 6} In the case sub judice, Mack has failed to demonstrate that a request for findings of fact was made in the underlying criminal action of *State v. Mack*, Cuyahoga County Court of Common Pleas Case No. CR-518304. In fact, the docket in *State v. Mack*, supra, fails to disclose that any motion to discharge for failure to comply with the speedy trial provisions of R.C. 2945.71 was ever filed. Thus, Mack has failed to state a claim that Judge Ambrose possesses any duty to issue findings of fact.

{¶ 7} Accordingly, we grant Judge Ambrose's motion for summary judgment. Costs to Mack. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as mandated by Civ.R. 58(B).

Writ denied.

KENNETH A. ROCCO, PRESIDING JUDGE

CHRISTINE T. MCMONAGLE, J., and
JAMES J. SWEENEY, J., CONCUR