

[Cite as *State ex rel. Brooks v. Saffold*, 2009-Ohio-4357.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93682

**STATE OF OHIO, EX REL.,
ULIOUS BROOKS**

RELATOR

vs.

JUDGE SHIRLEY STRICKLAND SAFFOLD

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF PROCEDENDO
MOTION NO. 425370
ORDER NO. 425454

RELEASE DATE: August 25, 2009

FOR RELATOR

Ulious Brooks, pro se
Inmate No. 453-172
P.O. Box 45699
Lucasville, Ohio 45699

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

BY: James E. Moss
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MELODY J. STEWART, J.:

{¶ 1} On July 28, 2009, relator Ulious Brooks commenced this procedendo action against Judge Shirley Strickland Saffold to compel her to rule on his post conviction relief motions which were filed in *State v. Brooks*, Cuyahoga County Court of Common Pleas Case No. CR-435228 on September 14, 2004, and October 1, 2004. On August 17, 2009, Judge Strickland Saffold, through the Cuyahoga County Prosecutor's office, filed a motion for summary judgment. For the following reason, we grant the motion for summary judgment.

{¶ 2} Initially, we find that Brooks' complaint for a writ of procedendo is defective since it is improperly captioned. A complaint for a writ of procedendo must be brought in the name of the state, on relation of the person applying.

Brooks' failure to properly caption the complaint warrants dismissal. *Maloney 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.

{¶ 3} Brooks also failed to support his complaint with an affidavit "specifying the details of the claim" as required by Local Rule 45(B)(1)(a). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077; *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶ 4} We also find that the petition for a writ of procedendo is fatally defective since Brooks failed to comply with R.C. 2969.25, which mandates that he attach an affidavit to his complaint that describes each civil action or appeal of a civil action filed in the previous five years. The failure to provide such affidavit constitutes sufficient grounds for dismissal of the relator's complaint. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 2008-Ohio-218, 696 N.E.2d 594; *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

{¶ 5} Nevertheless, attached to the motion for summary judgment is a copy of a journal entry which indicates that on August 13, 2009, Judge Strickland Saffold denied Brooks' petitions for post-conviction relief and issued findings of fact and conclusions of law. Accordingly, we find that Brooks' petition for a writ of procedendo is moot. *State ex rel. Grant v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163; *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 278, 658 N.E.2d 723.

{¶ 6} Accordingly, we grant Judge Strickland Saffold's motion for summary judgment and deny Brooks' petition for a writ of procedendo. Respondent to bear costs. 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.

MELODY J. STEWART, JUDGE

SEAN C. GALLAGHER, P.J., and
MARY EILEEN KILBANE, J., CONCUR