

[Cite as *State ex rel. Whiteman v. Comstock*, 2009-Ohio-5231.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 93642

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**STATE OF OHIO, EX REL.,  
EDWARD WHITEMAN**

RELATOR

vs.

**JUDGE MARK A. COMSTOCK,  
BEREA MUNICIPAL COURT**

RESPONDENT

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**JUDGMENT:  
COMPLAINT DISMISSED**

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WRIT OF MANDAMUS  
MOTION NO. 424771 and 425167  
ORDER NO. 426094

**RELEASE DATE:** September 28, 2009

**FOR RELATOR**

Edward Whiteman, pro se  
#561-335  
NCI  
15708 McConnelsville Road  
Caldwell, Ohio 43724

**ATTORNEY FOR RESPONDENT**

Gregory M. Sponseller  
11 Berea Commons  
Berea, Ohio 44017

PATRICIA A. BLACKMON, P.J.:

{¶ 1} Relator, Edward Whiteman, is the defendant in *Olmsted Twp. v. Whiteman*,<sup>1</sup> which has been assigned to respondent judge. Whiteman was charged with two counts of driving while under suspension.<sup>2</sup>

{¶ 2} Whiteman avers that he is incarcerated and filed a request for final disposition of Case No. 08TRD03771.<sup>3</sup> He also avers that he filed a motion to dismiss Case No. 08TRD03771, which remained pending at the time of the filing of this action on July 20, 2009. Whiteman requests that this court issue a writ of

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<sup>1</sup> Berea Mun. Court Case No. 08TRD03771.

<sup>2</sup> R.C. 4510.10 and 4510.16(A).

<sup>3</sup> R.C. 2941.401 (“Request by a prisoner for trial on pending charges”).

mandamus compelling respondent to dismiss Case No. 08TRD03771 for failure to prosecute within the speedy trial time limits.<sup>4</sup>

{¶ 3} Respondent has filed a motion to dismiss. Attached to the motion to dismiss is a copy of the docket in Case No. 08TRD03771. The docket in Case No. 08TRD03771 reflects that respondent dismissed both charges on July 23, 2009. Respondent argues that this action is moot.

{¶ 4} Whiteman has filed a brief in opposition to the motion to dismiss. Whiteman acknowledges that respondent has dismissed Case No. 08TRD03771.

Nevertheless, Whiteman argues that he is entitled to relief in mandamus because respondent did not act on his various requests for a disposition of Case No. 08TRD03771. Whiteman employs the same argument in his motion for summary judgment in which he requests that this court issue a writ of mandamus.

{¶ 5} In light of the fact that respondent has dismissed the charges against Whiteman and, therefore, Whiteman has received the relief he requested, this action is moot. “A court may take judicial notice of mootness. ‘In fact, “an event that causes a case to be moot may be proved by extrinsic evidence outside the record.” *Pewitt v. Lorain Correctional Inst.* (1992), 64 Ohio St.3d 470, 472, 597 N.E.2d 92, 94.’ *State ex rel. Nelson v. Russo* (2000), 89 Ohio St.3d 227, 228, 2000-Ohio-141, 729 N.E.2d 1181. As a consequence, we take judicial notice of

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<sup>4</sup> R.C. 2945.71.

the mootness of this action in light of the filing of the” July 23, 2009 dismissal entries.<sup>5</sup>

{¶ 6} Accordingly, we grant respondent’s motion to dismiss and deny relator’s motion for summary judgment. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Complaint dismissed.

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PATRICIA A. BLACKMON, PRESIDING JUDGE

MARY J. BOYLE, J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR

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<sup>5</sup> *State ex rel. Mayes v. Ambrose*, Cuyahoga App. No. 91890, 2009-Ohio-25, at ¶5.