

[Cite as *State ex rel. Ali v. McMonagle*, 2010-Ohio-3514.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95059

**STATE OF OHIO, EX REL.
OSIRIS ALI**

RELATOR

vs.

TIMOTHY McMONAGLE, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 434252
Order No. 435335

RELEASE DATE: July 27, 2010

FOR RELATOR

Osiris Ali, pro se
#503-171
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ATTORNEYS FOR RESPONDENT

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Cuyahoga County Prosecutor

By: James E. Moss
Assistant County Prosecutor
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LARRY A. JONES, J.:

{¶ 1} Relator, Osiris Ali, requests that this court issue a writ of mandamus compelling respondent judge to issue findings of fact and conclusions of law with respect to the motion for void judgment filed by relator in *State v. Ali*, Cuyahoga County Court of Common Pleas Case No. CR-465969 on November 10, 2008.

{¶ 2} Respondent has filed a motion for summary judgment attached to which is a copy of the journal entry denying the motion to vacate void judgment issued by respondent and received for filing by the clerk on May 13,

2010. Relator has not opposed the motion. Respondent argues that relief in mandamus is not appropriate. We agree.

{¶ 3} Ali contends that respondent has a duty to issue findings of fact and conclusions of law with respect to the denial of the motion to void judgment. Ali describes his November 10, 2008 filing as a petition for postconviction relief in his complaint in this action. Nevertheless, he has attached a copy to his complaint and the caption of the filing is “motion to vacate void judgement [sic].”

{¶ 4} Ali has not asserted any controlling authority requiring a court to issue findings of fact and conclusions of law when denying a motion to vacate void judgment. Regardless, even if Ali’s filing were a bona fide petition for postconviction relief, he would not be entitled to relief in mandamus. “The Supreme Court of Ohio has held that a trial court has no duty to issue findings of fact and conclusions of law when it dismisses an untimely postconviction relief petition.” *State ex rel. Stadmire v. Kilbane-Koch*, Cuyahoga App. No. 93578, 2009-Ohio-3747, at ¶4 (citations deleted). R.C. 2953.21(A)(2) provides, in part, that a petition for postconviction relief “shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction * * * .”

{¶ 5} The transcript was filed in Case No. CR-465969 on August 28, 2006 as part of Ali's appeal in *State v. Ali*, Cuyahoga App. No. 88147, 2007-Ohio-3776. Ali's motion to vacate void judgment was not filed until November 10, 2008, more than two years after the filing of the transcript. In *Stadmire*, supra, approximately twenty-three months elapsed between the filing of the transcript and the filing of the petition for postconviction relief. As a consequence, this court held in *Stadmire* that relief in mandamus was not appropriate to compel the respondent judge to issue findings of fact and conclusions of law and denied relief in mandamus.

{¶ 6} Similarly, in this action, even if the "motion to vacate void judgement [sic]" were viewed as a petition for postconviction relief, Ali would not be entitled to relief in mandamus. Because his motion was filed untimely, respondent judge did not have a duty to issue findings of fact and conclusions of law.

{¶ 7} Accordingly, respondent's motion for summary judgment is granted. 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).

Writ denied.

LARRY A. JONES, JUDGE

MARY EILEEN KILBANE, P.J., and
PATRICIA A. BLACKMON, J., CONCUR