

[Cite as *State ex rel. Infante v. Byrd*, 2017-Ohio-7082.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105853

**STATE OF OHIO, EX REL.
JOSE INFANTE**

RELATOR

vs.

NAILAH K. BYRD, CLERK OF COURTS

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 507971
Order No. 508384

RELEASE DATE: July 28, 2017

FOR RELATOR

Jose Infante, pro se
Inmate No. A550-894
Grafton Correctional Institution
2500 South Avon Belden Road
Grafton, Ohio 44044

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶1} Jose Infante has filed a complaint for a writ of mandamus. Infante seeks an order from this court that requires the Cuyahoga County Clerk of Courts, Nailah Byrd, to provide him, at state's expense, with a copy of the trial transcript that was originally filed in *State v. Infante*, 8th Dist. Cuyahoga No. 91782. Byrd has filed a motion for summary judgment.

{¶2} An indigent criminal appellant is entitled to one free trial transcript at state's expense when an appeal is pending. *State ex rel. Murr v. Thierry*, 34 Ohio St.3d 45, 517 N.E.2d 226 (1987). However, the Supreme Court of Ohio has established that the state is not required to provide an indigent criminal defendant with a second trial transcript at state's expense. *State ex rel. Vitoratos v. Walsh*, 173 Ohio St. 467, 183 N.E.2d 917 (1962). In addition, the Ohio Supreme Court has established that the clerk of courts possesses no duty to provide an indigent defendant with a copy of a trial transcript in addition to the copy already filed in the court of appeals. *State ex rel. Greene v. Enright*, 63 Ohio St.3d 729, 590 N.E.2d 1257 (1992); *Dunning v. Cleary*, 8th Dist. Cuyahoga No. 78763, 2001 Ohio App. LEXIS 79 (Jan. 11, 2001).

{¶3} Attached to Byrd's motion for summary judgment is a copy of a journal entry, journalized on June 12, 2008, that demonstrates a transcript of the trial proceedings in *State v. Infante*, Cuyahoga C.P. No. CR-07-500697, was ordered at state's expense. See Exhibit B. In addition, attached to Byrd's motion for summary judgment is a copy

of the docket maintained in *State v. Infante*, 8th Dist. Cuyahoga No. 91782, which demonstrates that the trial transcript of proceedings, consisting of four volumes, was filed with the clerk of this court on August 20, 2008. See Exhibit C. Infante is not entitled to a second copy of the trial transcript, at state's expense, nor does Byrd possess any duty to provide Infante with a copy of the trial transcript.

{¶4} Accordingly, we grant Byrd's motion for summary judgment. Costs to Infante. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶5} Writ denied.

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, P.J., and
ANITA LASTER MAYS, J., CONCUR