

[Cite as *State ex rel. Brown v. Sutula*, 2017-Ohio-7409.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105871

**STATE OF OHIO, EX RE.
ALPHONSO W. BROWN**

RELATOR

vs.

THE HONORABLE JOHN D. SUTULA

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 509190
Order No. 509602

RELEASE DATE: August 30, 2017

FOR RELATOR

Alphonso W. Brown, pro se
Inmate No. A178610
Warren Correctional Institution
P.O. Box 120
Lebanon, Ohio 45036

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

FRANK D. CELEBREZZE, JR., J.:

{¶1} On June 7, 2017, the relator, Alphonso Brown, commenced this mandamus action against the respondent, Judge John D. Sutula,¹ to compel the judge to rule on a motion for new trial that Brown filed on August 1, 2016, in the underlying case, *State v. Brown*, Cuyahoga C.P. No. CR-83-187502-ZA. On August 1, 2017, the respondent judge moved for summary judgment on the grounds of mootness and pleading defect. Attached to the dispositive motion is a copy of a certified journal entry, file-stamped July 28, 2017, that denies Brown's motion for summary judgment.² This journal entry establishes that the respondent has fulfilled his duty to rule on the motion and that Brown has received his requested relief. Therefore, this writ action is moot.

{¶2} Relator also did not comply with R.C. 2969.25(C), which requires that an inmate file a poverty affidavit with a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. Brown included the cashier's statement, but did not attach a poverty affidavit. This also is sufficient reason to deny the mandamus, deny indigency status, and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844

¹Pursuant to Civ.R. 21, this court replaces the named respondent, Judge Robert Lawther, with his successor, Judge John D. Sutula.

²Although the journal entry states that the motion for new trial was filed on June 24, 2016, the only pending motion for new trial was the one filed on August 1, 2016. The misnomer is de minimis.

N.E.2d 842; *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420; and *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378 — the defect may not be cured by subsequent filings.

{¶3} Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of mandamus. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶4} Writ denied.

FRANK D. CELEBREZZE, JR., JUDGE

EILEEN A. GALLAGHER, P.J., and
MELODY J. STEWART, J., CONCUR