Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106009

STATE OF OHIO, EX REL. BRIAN MAYS

RELATOR

vs.

JUDGE TIMOTHY MCCORMICK

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Procedendo
Motion No. 509330
Order No. 510188

RELEASE DATE: September 27, 2017

FOR RELATOR

Brian Mays, pro se
1254 Parkwood Drive
Cleveland, Ohio 44108

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

EILEEN A. GALLAGHER, J.:

{¶1} On July 18, 2017, the relator, Brian Mays, commenced this procedendo action against the respondent, Cuyahoga County Common Pleas Court Judge Timothy McCormick, to compel him to rule on a motion to terminate postrelease control that he had filed in the underlying case, *State v. Mays*, Cuyahoga C.P. No. CR-02-424093-ZA. Respondent has moved for summary judgment on the grounds of mootness, which Mays has not opposed.

{¶2} Attached to respondent's motion is a certified copy of a journal entry, file-stamped July 26, 2017, granting defendant's motion. The journal entry, therefore, establishes that the request for a writ of procedendo is moot. *State ex rel. Bortoli v. Dinkelacker*, 105 Ohio St.3d 133, 2005-Ohio-779, 823 N.E.2d 448, ¶ 3 ("A writ of procedendo will not issue to compel the performance of a duty that has already been performed."); *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas,* 74 Ohio St.3d 278, 658 N.E.2d 723 (1996); *State ex rel. Pettway v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 98699, 2012-Ohio-5423.

{¶3} Accordingly, this court grants the respondent's motion for summary judgment and denies the writ. Costs assessed against relator; costs waived. 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).

{¶4} Writ denied.

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EILEEN A. GALLAGHER, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR