

[Cite as *State ex rel. Vigil v. Calabrese*, 2017-Ohio-8071.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106121

**STATE OF OHIO, EX REL.
CHRISTOPHER M. VIGIL**

RELATOR

vs.

JUDGE DEENA R. CALABRESE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Procedendo
Motion No. 510269
Order No. 510473

RELEASE DATE: October 4, 2017

FOR RELATOR

Christopher M. Vigil, pro se
Inmate No. A674721
P.O. Box 1812
Marion, Ohio 43301

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} On August 9, 2017, relator Christopher Vigil commenced this procedendo action against the respondent, Cuyahoga County Common Pleas Court Judge Deena Calabrese, to compel her to rule on a petition for postconviction relief that he filed in the underlying case, *State v. Vigil*, Cuyahoga C.P. No. CR-15-596356-A, on November 28, 2016. Respondent has moved for summary judgment on the grounds of mootness and that the petition is procedurally defective.

{¶2} Attached to respondent's motion is a certified copy of a journal entry, file-stamped September 12, 2017, denying Vigil's petition with findings of fact and conclusions of law. 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} We further note that the complaint is defective because it fails to include the address of the respondent in the caption as required by Civ.R. 10(A). This court has previously held that such deficiency warrants dismissal. *See, e.g., Mankins v. Jackson*, 8th Dist. Cuyahoga No. 103392, 2015-Ohio-5155, ¶ 2; *Simmons v. Saffold*, 8th Dist. Cuyahoga No. 94619, 2010-Ohio-918, ¶ 3.

{¶4} Accordingly, the 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).

{¶5} Writ denied.

MARY J. BOYLE, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
EILEEN A. GALLAGHER, J., CONCUR