

[Cite as *State v. Evans*, 2017-Ohio-8326.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106154

STATE OF OHIO

RESPONDENT

vs.

EDWARD EVANS

RELATOR

**JUDGMENT:
WRIT DENIED**

Writ of Procedendo
Motion No. 510192
Order No. 510866

RELEASE DATE: October 23, 2017

FOR RELATOR

Edward R. Evans
Inmate No. A523490
Belmont Correctional Institution
68518 Bannock Road
Saint Clairsville, Ohio 43950

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

SEAN C. GALLAGHER, P.J.:

{¶1} On August 21, 2017, Edward Evans commenced this procedendo action, which he captioned as “*State of Ohio v. Edward Evans.*” The relief sought in his one-page complaint is difficult to discern. He refers to R.C. 2929.19(B)(2)(g), which concerns jail-time credit, and R.C. 2953.08(A)(4) that permits appeals of sentences contrary to law.¹ He also refers to *State v. Watson*, 11th Dist. Astabula No. 2000-A-0082, 2001-Ohio-8792, which discusses the propriety of consecutive sentences. His conclusion states: “Judgment relief Procedendo is allowable via judgment for trial court to render for appeal. With instructions of rendering in Supertiedence [sic] Rule 40.”

{¶2} On September 8, 2017, the Cuyahoga County prosecutor moved for summary judgment on behalf of the respondent and argued pleading defects, mootness by the trial court granting Evans 86 days of jail-time credit, and adequate remedy at law. Evans’s rebuttal brief argued that because Counts 3 and 4 were allied offenses, he should be given “jail-time credit” for Count 4 and the failure of the trial court to so grant him this “jail-time credit” means that the judge should proceed to judgment on the issue and the

¹In the underlying case, *State v. Evans*, Cuyahoga C.P. No. CR-91-271019-ZA, in January 1992, Evans pled guilty to four counts of attempted rape. The trial court sentenced him to eight to fifteen years on Counts 1 and 2, seven to fifteen years on Count 3 and three to fifteen years on Count 4; Counts 3 and 4 were consecutive to each other but concurrent to Counts 1 and 2.

case. For the following reasons, this court grants the respondent's motion for summary judgment and denies the application for a writ of procedendo.

{¶3} The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. *Yee v. Erie Cty. Sheriff's Dept.*, 51 Ohio St.3d 43, 553 N.E.2d 1354 (1990). Procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Watkins v. Eighth Dist. Court of Appeals*, 82 Ohio St.3d 532, 1998-Ohio-190, 696 N.E.2d 1079. However, the writ will not issue to control what the judgment should be, nor will it issue for the purpose of controlling or interfering with ordinary court procedure. Thus, procedendo will not lie to control the exercise of judicial discretion. Moreover, it will not issue if the petitioner has or had an adequate remedy at law. *State ex rel. Utley v. Abruzzo*, 17 Ohio St.3d 203, 478 N.E.2d 789 (1985); *State ex rel. Hansen v. Reed*, 63 Ohio St.3d 597, 589 N.E.2d 1324 (1992); and *Howard v. Cuyahoga Cty. Probate Court*, 8th Dist. Cuyahoga No. 84702, 2004-Ohio-4621 (petitioner failed to use an adequate remedy at law).

{¶4} To the extent that Evans seeks to challenge his sentence because Counts 3 and 4 should have been merged or because the trial court improperly imposed consecutive sentences, Evans has or had an adequate remedy at law through appeal to challenge the sentences. Generally, sentencing errors are not remediable by extraordinary writs because, inter alia, appeal provides an adequate remedy at law. *State ex rel. Ridenour v. O'Connell*, 147 Ohio St.3d 351, 2016-Ohio-7368, 65 N.E.3d 742.

{¶5} To the extent that Evans seeks jail-time credit, outside of the merger of counts three and four, the issue has been rendered moot by the trial court granting him 86 days of jail-time credit. Appeal, not an extraordinary writ, is the remedy for challenging a calculation of jail-time credit. *Mosley v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 82269, 2002-Ohio-1364.

{¶6} The court notes that the case caption, *State of Ohio v. Edward Evans*, is improper, because it does not identify the respondent and causes confusion as to what exactly is the claim. The lack of clarity in a complaint, including an improper caption, provides a sufficient basis to deny a request for an extraordinary writ. *State v. Byrge*, 8th Dist. Cuyahoga No. 92979, 2009-Ohio-4376.

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

{¶8} Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of procedendo. 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).

{¶9} Writ denied.

SEAN C. GALLAGHER, PRESIDING JUDGE _____

PATRICIA ANN BLACKMON, J., and
ANITA LASTER MAYS, J., CONCUR