

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

JAMES L. WAVER, :  
Relator, :  
v. : No. 108665  
JUDGE ROBERT C. McCLELLAND, :  
Respondent. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT:** WRIT DENIED  
**DATED:** August 16, 2019

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Writ of Mandamus  
Motion No. 529846  
Order No. 530404

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***Appearances:***

James L. Waver, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, *for respondent*.

EILEEN T. GALLAGHER, P.J.:

{¶ 1} James L. Waver has filed a complaint for a writ of mandamus. Waver seeks an order from this court that compels Judge Robert C. McClelland to issue rulings and comply with the service provision contained in Civ.R. 58(B) with regard

to four motions filed in *State v. Waver*, Cuyahoga C.P. No. CR-97-351032: 1) application for DNA testing filed April 14, 2016; 2) motion for default judgment for DNA testing filed August 1, 2016; 3) motion to amend/supplement application for DNA testing filed July 20, 2017; and 4) motion to proceed with judgment filed December 27, 2017. Judge McClelland has filed a motion for summary judgment, which is granted for the following reasons.

{¶ 2} Attached to the motion for summary judgment are copies of judgment entries, journalized June 27, 2019, which demonstrate that Judge McClelland has re-issued rulings with regard to the application for DNA testing, the motion for default judgment for DNA testing, and the motion to amend/supplement the application for DNA testing. Also, each journal entry contained the specific language that “pursuant to Civ.R. 58(B), the Clerk of Courts is hereby ordered to send copies of the foregoing to the following parties and its date of entry upon the journal: Cuyahoga County Prosecutor \* \* \*; James L. Waver.”

{¶ 3} Relief is unwarranted because mandamus will not compel the performance of a duty that has already been performed. *State ex rel. Williams v. Croce*, 153 Ohio St.3d 348, 2018-Ohio-2703, 106 N.E.3d 55; *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49; *State ex rel. Fontanella v. Kontos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220. In addition, the motion to proceed with judgment is now moot because Judge McClelland has issued a ruling with regard to the application for DNA testing, the motion for default judgment for DNA testing, and the motion to

amend/supplement the application for DNA testing. *State ex rel. Jerningham v. Court of Common Pleas*, 74 Ohio St.3d 278, 658 N.E.2d 723 (1996).

{¶ 4} Accordingly, we grant Judge McClelland's motion for summary judgment. Costs to Waver; costs waived. 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.

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EILEEN T. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., and  
MICHELLE J. SHEEHAN, J., CONCUR