

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO EX REL.
MICHAEL RILEY,

Relator,

v.

JUDGE ROBERT C. McCLELLAND,

Respondent.

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No. 108921

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED

DATED: October 22, 2019

Writ of Mandamus
Motion No. 531619
Order No. 532590

Appearances:

Michael Riley, *pro se*.

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

SEAN C. GALLAGHER, J.:

{¶ 1} Michael Riley has filed a complaint for a writ of mandamus. Riley seeks an order from this court that compels Judge Robert C. McClelland to issue rulings with regard to motions filed in *State v. Riley*, Cuyahoga C.P. No. CR-16-

608045: 1) motions to establish payment plan for court costs filed August 8, 2018, November 5, 2018, and May 16, 2019; and 2) motion to vacate or suspend payment of court costs, fines, fees, and restitution filed June 28, 2019. Judge McClelland has filed a motion for summary judgment that is granted for the following reasons.

{¶ 2} We shall treat Riley's complaint for a writ of mandamus as a complaint in procedendo because although mandamus will lie in cases of a court's undue delay in entering judgment, procedendo is designed to remedy an inferior court's refusal or failure to timely dispose of a pending action or motion. *State ex rel. Dehler v. Sutula*, 74 Ohio St.3d 33, 35, 656 N.E.2d 332 (1995), quoting *State ex rel. Levin v. Sheffield Lake*, 70 Ohio St.3d 104, 110, 637 N.E.2d 319 (1994). A writ of procedendo will issue when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Miley v. Parrott*, 77 Ohio St.3d 64, 65, 671 N.E.2d 24 (1996).

{¶ 3} Attached to the motion for summary judgment are copies of judgment entries, journalized May 20, 2019, and July 9, 2019, which demonstrate that Judge McClelland has issued rulings with regard to Riley's motions to establish payment plans for court costs. Relief is unwarranted because the request for a writ of procedendo is moot. Procedendo 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.

{¶ 4} In addition, we deny Riley’s claim for procedendo on his motion to suspend payment of court costs, fines, fees, and restitution. The claim: is not ripe because the motion has only been pending for approximately two months; motion to suspend payment was filed June 28, 2019 and the complaint for procedendo was filed August 20, 2019. Thus, an inordinate amount of time has not elapsed to warrant procedendo to compel a ruling. Sup.R. 40(A)(3) provides that motions shall be ruled upon within 120 days from the date of filing. A complaint in procedendo to compel a ruling on a motion, which has been pending less than 60 days, is premature. *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas*, 83 Ohio App.3d 684, 615 N.E.2d 689 (8th Dist. 1992), and *State ex rel. Wilson v. Judge Sutula*, 8th Dist. Cuyahoga No. 87129, 2005-Ohio-5682.

{¶ 5} Accordingly, we grant Judge McClelland’s motion for summary judgment. Costs to Riley; 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).

{¶ 6} Writ denied.

SEAN C. GALLAGHER, JUDGE

EILEEN T. GALLAGHER, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR