

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE OF OHIO EX REL.  
CARLOS D. CRESPO, :  
  
Relator, :  
  
v. : No. 109441  
  
JOHN D. SUTULA, JUDGE, :  
  
Respondent. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT:** WRIT DENIED  
**DATED:** April 22, 2020

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Writ of Procedendo  
Motion No. 536405  
Order No. 537956

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***Appearances:***

Carlos D. Crespo, *pro se*.

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

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Carlos D. Crespo has filed a complaint for a writ of procedendo. Crespo seeks an order from this court that requires Judge John D. Sutula to issue rulings with regard to petitions to vacate or set aside judgment of conviction and

sentence filed in *State v. Crespo*, Cuyahoga C.P. Nos. CR-15-600269-A and CR-15-601495-A. Crespo also seeks an order from this court that requires Judge Sutula to issue findings of fact and conclusions of law with regard to the petitions to vacate or set aside judgment of conviction and sentence filed in CR-15-600269-A and CR-15-601495-A. Judge Sutula has filed a motion for summary judgment, which is granted for the following reasons.

{¶ 2} Attached to Judge Sutula's motion for summary judgment are copies of judgment entries, journalized on February 25, 2020, which indicate that Crespo's petitions to vacate or set aside judgment of conviction and sentence filed in CR-15-600269-A and CR-15-601495-A were denied. Crespo's complaint for a writ of procedendo is thus moot. Neither procedendo or mandamus will 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.

{¶ 3} In addition, Judge Sutula possesses no duty to issue findings of fact and conclusions of law with regard to the petitions to vacate or set aside judgment of conviction and sentence. Pursuant to R.C. 2953.21(A)(2), Crespo was required to file his petitions to vacate or set aside judgment of conviction and sentence, in order to be timely, no later than 365 days after the date on which the trial transcripts were filed in the court of appeals in the direct appeals of the judgments of conviction. On

October 13, 2016, Crespo filed a timely notice of appeal, in 8th Dist. Cuyahoga No. 105072, from the judgments of conviction and sentence imposed in CR-15-600269-A and CR-15-601495-A. On December 16, 2016, the trial transcript was filed in 8th Dist. Cuyahoga No. 105072. Crespo filed his petitions to vacate or set aside judgment of conviction and sentence on March 15, 2019, more than 365 days after the transcript was filed in his appeal to this court. Because Crespo failed to file his petitions to vacate or set aside judgment of conviction and sentence within 365 days of the filing of the transcript in 8th Dist. Cuyahoga No. 105072, as required by R.C. 2953.21(A)(2), Judge Sutula did not possess any duty to issue findings of fact and conclusions of law. *State ex rel. Kimbrough v. Greene*, 98 Ohio St. 3d 116, 2002-Ohio-7042, 781 N.E.2d 155; *State ex rel. Hach v. Summit Cty. Court of Common Pleas*, 102 Ohio St.3d 75, 2004-Ohio-1800, 806 N.E.2d 554; *see also State ex rel. Dillon v. Cottrill*, 145 Ohio St.3d 264, 2016-Ohio-626, 48 N.E.3d 552.

{¶ 4} Finally, Crespo has failed to comply with R.C. 2969.25(C), which provides that an inmate who seeks a waiver of the fees associated with filing a civil action against a government entity or employee must also file an affidavit of waiver containing: (1) a statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier; and (2) a statement that sets forth all other cash and things of value owned by the inmate at that time. Crespo has failed to provide this court with an affidavit of waiver that complies with R.C. 2969.25(C). It must also be noted that Crespo cannot cure the defect by filing an amended complaint for procedendo that contains the

affidavit of waiver. *State ex rel. Hall v. Mohr*, 140 Ohio St.3d 297, 2014-Ohio-3735, 17 N.E.3d 581; *State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 719 N.E.2d 544 (1999); *Mankins v. Jackson*, 8th Dist. Cuyahoga No. 103392, 2015-Ohio-5155.

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

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FRANK D. CELEBREZZE, JR., JUDGE

PATRICIA ANN BLACKMON, P.J., and  
MARY EILEEN KILBANE, J., CONCUR