

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

THE STATE OF OHIO IN THE
RELATION OF RAMON GRAY, :

Relator, :

v. :

JUDGE SHERRIE MIDAY, :

Respondent. :

No. 110646

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT GRANTED
DATED: November 12, 2021

Writ of Procedendo
Motion No. 548107
Order No. 550442

Appearances:

Ramon Gray, *pro se*.

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

SEAN C. GALLAGHER, P.J.:

{¶ 1} Ramon Gray, the relator, seeks a writ of procedendo to compel Judge Sherrie Miday, the respondent, to issue findings of fact and conclusions of law with regard to a petition for postconviction relief filed on July 29, 2009, in *State v. Gray*,

Cuyahoga C.P. No. CR-08-507759-A.¹ We grant Gray's request for a writ of procedendo and deny Judge Miday's motion to dismiss for the following reasons.

{¶ 2} R.C. 2953.21(A)(2) provides that Gray is entitled to findings of fact and conclusions of law. In fact, Judge Miday states in her motion to dismiss that Gray is entitled to findings of fact and conclusions of law:

In his Petition Gray is asking this Court to compel respondent Judge Sherrie Miday to issue findings of fact and conclusions of law in response to a petition for postconviction relief Gray filed on July 29, 2009, in case number CR-08-507759-A. Respondent Judge Miday agrees that Gray's petition for postconviction relief filed on July 29, 2009, was timely filed and that Gray is entitled to findings of fact and conclusions of law under R.C. 2953.21(A)(2) in case number CR-08-507759-A. However, it is respondent Judge Miday's contention that the trial court cannot issue findings of fact and conclusions of law under R.C. 2953.21(A)(2) in case number CR-08- 507759-A at this time.

Under Ohio law a trial court has jurisdiction to issue findings of fact and conclusions of law if there is a direct appeal [emphasis added] pending. *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110, 15 (trial courts routinely consider petitions for postconviction relief even while an appeal from the conviction [emphasis added] is pending in the court of appeals or Supreme Court of Ohio); see also R.C. 2953.21(D) ("The court shall consider a petition for postconviction relief that is timely filed within the period specified in division (A)(2) of this section even if a direct appeal [emphasis added] of the judgment is pending").

However, on February 9, 2021, Gray filed an appeal of the trial court's denial of Mr. Gray's motion for leave to file a motion for new trial he filed on April 20, 2020, in case number CR-08-507759-A. *See State v. Ramon Gray*, 8th Dist. Cuyahoga App. No.CA-21-110283, which is currently pending before this Court.

Gray's appeal in *State v. Ramon Gray*, 8th Dist. Cuyahoga App. No. CA-21- 110283 is not a direct appeal of his convictions. *See State v. Carnail*, 8th Dist. Cuyahoga App. No. 86539, 2006-Ohio-1246, 7 (a

¹ Pursuant to Civ.R. 25(D)(1), Judge Sherrie Miday is substituted for the original judge that presided over the proceedings in CR-08-507759-A.

petition for postconviction relief is filed subsequent to the direct appeal of conviction). Since the Supreme Court of Ohio in *Eads* and R.C. 2953.21(D) provide that a trial court may consider a petition for postconviction relief that is timely filed if a direct appeal [emphasis added] is pending, it is reasonable to presume that a trial court may not consider a petition for postconviction relief when an appeal, other than a direct appeal, is pending.

Since Mr. Gray's appeal in *State v. Ramon Gray*, 8th Dist. Cuyahoga App. No. CA-21-110283 is not a direct appeal of his conviction, respondent Judge Miday does not have jurisdiction to issue findings of fact and conclusions of law in CR-08-507759 until Mr. Gray's pending appeal has been decided. Respondent is prepared to issue findings of fact and conclusions of law in response to the petition for postconviction relief Gray filed on July 29, 2009, in case number CR-08-507759-A, but not until Gray's appeal in *State v. Ramon Gray*, 8th Dist. Cuyahoga App. No. CA-21-110283 is decided.

Motion to dismiss, p. 3-5.

{¶ 3} On October 14, 2021, this court rendered an opinion with regard to the appeal filed by Gray in *State v. Gray*, 8th Dist. Cuyahoga No. 110283, 2021-Ohio-3670. Because the jurisdictional impediment that prevented Judge Miday from rendering findings of fact and conclusions of law has been removed, we find that Gray is entitled to a writ of procedendo. *State ex rel. Doe v. Gallia Cty. Common Pleas Court*, 153 Ohio St.3d 623, 2018-Ohio-2168, 109 N.E.3d 1222; *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564; *State ex rel. Cleveland v. Corrigan*, 8th Dist. Cuyahoga No. 93940, 2009-Ohio-6655. Within 30 days of the date of this judgment, Judge Miday is to render findings of fact and conclusions of law with regard to Gray's petition for postconviction relief that was filed on July 29, 2009.

{¶ 4} Accordingly, we deny Judge Miday's motion to dismiss and grant a writ of procedendo on behalf of Gray. Costs to Judge Miday; 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 granted.

SEAN C. GALLAGHER, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
MARY EILEEN KILBANE, J., CONCUR