

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.,	:	JUDGES:
GARY LACY	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. Patricia A. Delaney, J.
Relator	:	Hon. Craig R. Baldwin, J.
	:	
-vs-	:	
	:	
JAMES D. DEWEESE, JUDGE	:	Case No. 14CA76
	:	
Respondent	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Writ of Mandamus

JUDGMENT: Dismissed

DATE OF JUDGMENT: May 7, 2015

APPEARANCES:

For Petitioner

GARY LACY, Pros Se
Inmate No. 623415
501 Thompson Road
P. O. Box 8000
Conneaut, OH 44030

For Respondent

JILL M. COCHRAN
Assistant Richland Co. Prosecutor
38 South park Street
2nd Floor
Mansfield, OH 44902

Farmer, J.

{¶1} Relator, Gary Lacy, has filed a Petition for Writ of Mandamus requesting Respondent be ordered to rule on a motion filed in the trial court on April 11, 2014. The motion filed April 11, 2014 is a motion for post conviction relief.

{¶2} Respondent has filed a motion to dismiss the petition arguing the trial court has no clear legal duty to rule on the motion.

{¶3} For a writ of mandamus to issue, the relator must have a clear legal right to the relief prayed for, the respondent must be under a clear legal duty to perform the requested act, and relator must have no plain and adequate remedy in the ordinary course of law. *State, ex rel. Berger, v. McMonagle* (1983), 6 Ohio St.3d 28, 6 OBR 50, 451 N.E.2d 225.

{¶4} However, the Supreme Court has held procedendo and mandamus will not issue where the requested relief has been obtained, “Neither procedendo nor mandamus will compel the performance of a duty that has already been performed.” *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 318, 725 N.E.2d 663, 668.

{¶5} It appears Respondent has now ruled on the April 11, 2014 motion by way of its entry dated December 29, 2014. Because Respondent has ruled on the motion in

question, the instant petition has become moot. For this reason, the motion to dismiss is granted, and the instant petition is dismissed.

By Farmer, P.J.

Delaney.J. and

Baldwin, J. concur.