

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE ex rel. EDWARD DUBOSE,)	
)	CASE NO. 13 MA 38
RELATOR,)	
)	<u>OPINION</u>
- VS -)	<u>AND</u>
)	<u>JUDGMENT ENTRY</u>
JUDGE JAMES EVANS,)	
)	
RESPONDENT.)	

CHARACTER OF PROCEEDINGS: Relator's Petition for Writ of Mandamus;
Respondent's Motion to Dismiss.

JUDGMENT: Petition for Writ of Mandamus Dismissed
As Moot.

APPEARANCES:

For Relator:

Edward Dubose, *Pro Se*
#A378-874
Belmont Correctional Institution
P.O. Box 540
St. Clairsville, Ohio 43950

For Respondent:

Attorney Paul Gains
Prosecuting Attorney
Attorney Ralph Rivera
Assistant Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

JUDGES:

Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: June 19, 2013

PER CURIAM:

¶{1} On September 10, 2012, Edward Dubose filed a motion for additional jail time credit in the Mahoning County Common Pleas Court in case number 99CR345. On March 28, 2013, he filed a petition for a writ of mandamus in this court asking that we order the trial court to rule on his motion. In April, the state filed a response to his motion in the trial court and then asked this court for leave to respond to the request for a writ, which we granted.

¶{2} On April 25, 2013, the trial court granted the motion of Edward Dubose and gave him an additional 282 days of jail time credit. We thus deny the within petition as it has been rendered moot. In doing so, we note that when a petitioner believes that a judge has unnecessarily delayed in ruling or has otherwise refused to issue a judgment, the most appropriate petition to file is one seeking procedendo, asking that the court “proceed” to judgment. See *State ex rel. Carnail v. McCormick*, 126 Ohio St.3d 124, 2010-Ohio-2671, 931 N.E.2d 110, ¶ 32; *State ex rel. Dehler v. Sutula*, 74 Ohio St.3d 33, 35, 656 N.E.2d 332 (1995). Still, a mandamus action can be used instead. *Id.*; *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459, ¶ 5.

¶{3} To be entitled to the writ, the petitioner must establish a clear legal right to the requested relief, a clear legal duty on the part of the judge to provide it, and the lack of an adequate remedy in the ordinary course of law. See *State ex rel. Stanley v. D’Apolito*, 7th Dist. No. 10MA114, 2010-Ohio-4850, ¶ 3. In ruling on a request for a writ of mandamus or procedendo in such a scenario, we do not tell the trial judge how to rule but instead we tell the judge whether or not they have to immediately take action in the case. *Id.*

¶{4} Thus, where a petitioner seeks to compel a trial court to rule on a pending motion, the trial court’s grant or denial of the motion renders the action moot. *State ex rel. Howard v. Skow*, 102 Ohio St.3d 423, 811 N.E.2d 1128, 2004-Ohio-3652, ¶ 9 (explaining that the court reviewing a request for a writ can consider the trial court’s acts after the petition is filed); *State ex rel. Grove v. Nadel*, 84 Ohio St.3d 252, 253, 703 N.E.2d 304 (1998) (“Neither procedendo nor mandamus will compel the

performance of a duty that has already been performed.”); *State ex rel. Howard v. Belmont County Common Pleas Court*, 7th Dist. No. 09BE22, 2009-Ohio-6811, ¶ 7. In conclusion, since the trial court has ruled on the motion for additional jail time credit, petitioner’s request for a writ of mandamus is moot.

¶{5} The request for a writ is hereby denied.

¶{6} Final Order. Clerk to serve notice as provided by the Civil Rules.

Vukovich, J., concurs.

Donofrio, J., concurs.

DeGenaro, J., concurs.