

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State ex rel. Lamar Porter

Court of Appeals No. L-12-1281

Relator

v.

Hon. James D. Jensen

DECISION AND JUDGMENT

Respondent

Decided: November 27, 2012

* * * * *

Lamar Porter, pro se.

* * * * *

SINGER, P.J.

{¶ 1} Relator, Lamar Porter, pro se, has filed a petition for writ of mandamus and/or procedendo, requesting that we order respondent, Judge James D. Jensen, to issue a final order in the case of *State of Ohio v. Lamar Porter*, Lucas County Court of Common Pleas case No. 2004-CR-1293, “reflecting the sentence of restitution as to ‘*settling a specific amount of restitution*’ (‘no restitution owed’) as required per *Baker*,

Danison, and *City of Toledo v. Kakissis* to comport with Crim.R. 32(C) and R.C. 2505.02 to be a ‘final appealable order.’”

{¶ 2} To be entitled to the issuance of a writ of mandamus, relator must demonstrate: (1) a clear legal right to the relief prayed for, (2) a clear legal duty on the respondent’s part to perform the act, and (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland*, 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180 (1996); *State ex rel. Harris v. Rhodes*, 54 Ohio St.2d 41, 42, 374 N.E.2d 641 (1978). A writ of procedendo is appropriate when a court has either refused to render judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 532, 705 N.E.2d 1227 (1999). Moreover, procedendo is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not be used in doubtful cases. *Chokel v. Celebrezze*, 8th Dist. No. 78355, 2000 WL 1900332 (Dec. 19, 2000).

{¶ 3} In this case, relator has requested that we order respondent to issue a final appealable order in Lucas County case No. 2004-CR-1293 reflecting a specific amount of restitution. In support of his request, among other things, relator has attached the following: a nunc pro tunc sentencing judgment entry issued by respondent on December 29, 2011, correcting the original sentencing judgment entry issued on August 19, 2004, relator’s July 31, 2012 “ Motion for Issuance for a Final Appealable Order,” and respondent’s August 6, 2012 judgment entry denying relator’s motion.

{¶ 4} In his July 31, 2012 motion, relator claimed that the December 29, 2011 judgment entry was not final and appealable because respondent failed to include a specific amount of restitution. In the August 6, 2012 judgment entry, respondent addressed this argument, stating that it had not included a “specific amount of restitution” because no restitution order had ever been ordered against relator, either initially or in the nunc pro tunc judgment entry. In other words, the court was not required to include in its judgment entry something which was never ordered as a part of relator’s sentence.

{¶ 5} Therefore, we conclude that relator has failed to establish the minimum requirements for either a writ in mandamus or procedendo. Accordingly, relator’s petition is dismissed. All pending motions are hereby deemed moot. Court costs of this action are assessed to relator.

{¶ 6} It is so ordered.

Writ denied.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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