

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Dehler v. Kelly*, Slip Opinion No. 2009-Ohio-5259.]

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SLIP OPINION NO. 2009-OHIO-5259

THE STATE EX REL. DEHLER, APPELLANT, v. KELLY, WARDEN, APPELLEE.

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Slip Opinion No. 2009-Ohio-5259.]

Court of appeals' judgment denying writ of mandamus affirmed — Mandamus will not compel performance of an act that has already been performed — Prisoner failed to prove a reasonable expectation that he would be subject to the same action again.

(No. 2009-1121 — Submitted September 30, 2009 — Decided October 7, 2009.)

APPEAL from the Court of Appeals for Trumbull County, No. 2008-T-0062,

2009-Ohio-2534.

Per Curiam.

{¶ 1} We affirm the judgment of the court of appeals denying a writ of mandamus to compel a prison warden to provide properly fitting shoes to appellant, Lambert Dehler. Mandamus will not compel the performance of an act

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that has already been performed. *State ex rel. Fontanella v. Kontos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220, ¶ 6.

{¶ 2} The court of appeals correctly restricted its holding to Dehler himself because Dehler did not bring his mandamus case as a class action. See *State ex rel. Ogan v. Teater* (1978), 54 Ohio St.2d 235, 247, 8 O.O.3d 217, 375 N.E.2d 1233 (“Where, as in the instant cause, the party bringing suit does not attempt to bring his cause of action within the provisions of Civ.R. 23, it is clear that the court may properly limit its holding to that of the party alone”). With that restriction, Dehler was unable to establish that his mandamus claim was not moot, i.e., he failed to prove a reasonable expectation that he would be subject to the same action again. See *State ex rel. Cincinnati Enquirer v. Heath*, 121 Ohio St.3d 165, 2009-Ohio-590, 902 N.E.2d 976, ¶ 11.

Judgment affirmed.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O’CONNOR,
O’DONNELL, LANZINGER, and CUPP, JJ., concur.

Lambert Dehler, pro se.

Richard Cordray, Attorney General, and Ashley Dawn Rutherford,
Assistant Attorney General, for appellee.
