

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Fernbach v. Brush*, Slip Opinion No. 2012-Ohio-4214.]

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SLIP OPINION NO. 2012-OHIO-4214

THE STATE EX REL. FERNBACH, APPELLANT, v. BRUSH, CLERK, APPELLEE.

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Slip Opinion No. 2012-Ohio-4214.]

Appeal of denial of writ of mandamus—Judgment affirmed.

(No. 2012-0105—Submitted September 12, 2012—Decided September 20, 2012.)

APPEAL from the Court of Appeals for Montgomery County, No. 24713.

Per Curiam.

{¶ 1} We affirm the judgment of the court of appeals denying the request of appellant, Richard Fernbach, for a writ of mandamus to compel appellee, Montgomery County Clerk of Courts Gregory A. Brush, to turn over certain records to him under R.C. 149.43, the Public Records Act.

{¶ 2} R.C. 149.43(B)(8) requires an incarcerated criminal offender who seeks records relating to an inmate’s criminal prosecution to obtain a finding by the sentencing judge or the judge’s successor that the requested information is necessary to support what appears to be a justiciable claim. *State ex rel. Chatfield*

SUPREME COURT OF OHIO

v. Flautt, 131 Ohio St.3d 383, 2012-Ohio-1294, 965 N.E.2d 304. Fernbach did not obtain such a finding.

{¶ 3} Insofar as Fernbach claims on appeal that R.C. 149.43(B)(8) is unconstitutional, he waived this claim by failing to raise it below. *State ex rel. Boyd v. Ward*, 132 Ohio St.3d 90, 2012-Ohio-2359, 969 N.E.2d 263, ¶ 3.

Judgment affirmed.

O'CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O'DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.

Richard Fernbach, pro se.
