[Cite as *Flores v. Kelsey*, 2018-Ohio-3886.]

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

Miguel A. Flores — Court of Appeals No. WD-18-065

Relator

v.

Judge Reeve Kelsey — **DECISION AND JUDGMENT**

Respondent — Decided: September 19, 2018

* * * * *

Miguel A. Flores, pro se.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This matter is before the court on relator's, Miguel Flores, petition for a writ of procedendo to compel respondent, Hon. Reeve Kelsey, to rule on his "Motion for Immediate Return of Seized Property."

{¶ 2} In case No. 2015-CR-0271, relator was indicted on one count of trafficking in marijuana, and one count of possession of cocaine. Each count included a

specification for the forfeiture of $3,401 in U.S. currency. On August 11, 2016, case No. 2015-CR-0271 was dismissed with prejudice as part of a plea agreement in another case. Over a year later, on October 19, 2017, relator filed his pro se "Motion for Immediate Return of Seized Property" in case No. 2015-CR-0271, seeking the return of his $3,401. Respondent has not ruled on relator's motion.

{¶ 3} To be entitled to a writ of procedendo, relator must demonstrate "a clear legal right to require the court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 7.

{¶ 4} Although relator has an alternative avenue of relief for the recovery of his funds by way of an action for replevin, *see State ex rel. Jividen v. Toledo Police Dept.*, 112 Ohio App.3d 458, 459, 679 N.E.2d 34 (6th Dist.1996) ("The proper action to reclaim possession of property based on unlawful seizure or detention is an action for replevin."), courts routinely address postconviction motions for the return of seized property, including in criminal cases even after the charges have been dismissed. *State v. Harris*, 10th Dist. Franklin No. 99AP-684, 2000 Ohio App. LEXIS 818, *6-7 (Mar. 7, 2000). Notably, Sup.R.40(A)(3) imposes on trial courts a duty to rule on motions within 120 days, and while the Rules of Superintendence do not provide litigants with a right to enforce Sup.R. 40, "'procedendo and mandamus will lie when a trial court has refused to render, or unduly delayed rendering, a judgment.'" *State ex rel. Brown v. Luebbers*, 137 Ohio St.3d 542, 2013-Ohio-5062, 1 N.E.3d 395, ¶ 14, quoting *Culgan* at ¶ 10. Here, the

trial court has failed to rule on relator's motion for over 10 months, and relator is left with no other remedy at law to compel the trial court to act.

{¶ 5} Notwithstanding relator's satisfaction of the requirements for an alternative writ of procedendo to issue on the merits, we must sua sponte dismiss relator's petition because it fails to meet the basic procedural requirements for filing. In particular, we find that the petition for a writ of procedendo is fatally defective because it does not comply with Civ.R. 10 in that it does not provide an address for relator. *See* Civ.R. 10(A) ("In the complaint the title of the action shall include the names and addresses of all the parties * * *."); *State v. Lacy*, 6th Dist. Huron No. H-14-013, 2014-Ohio-3858, ¶ 3, quoting *Scott v. Sargeant*, 6th Dist. Sandusky No. S-09-008, 2009-Ohio-1745, ¶ 5 ("It is well-settled that 'failure to properly caption a mandamus action is sufficient grounds for denying the writ and dismissing the petition.'").

{¶ 6} Accordingly, we hereby dismiss relator's petition for a writ of procedendo without cost. The clerk is directed to serve upon the parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

Writ Denied.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE