

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

STATE ex rel. JEFFERY SPRING,

Relator,

v.

JUDGE JOSEPH J. BRUZZESE, JR., FOR COURT OF COMMON
PLEAS, JEFFERSON COUNTY

Respondent.

OPINION AND JUDGMENT ENTRY
Case No. 19 JE 0012

Writ of Prohibition

BEFORE:

Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Dismissed.

Jeffery Spring, Pro se, #A672-693, Trumbull Correctional Institution, 5701 Burnett Road, P.O. Box 901, Leavittsburg, Ohio 44430

Atty. Jane M. Hanlin, Jefferson County Prosecutor, Jefferson County Justice Center, 16001 State Route 7, Steubenville, Ohio 43952, for Respondent.

Dated: June 1, 2020

PER CURIAM.

{¶1} Relator Jeffrey Spring, proceeding on his own behalf, has filed a request for a writ of procedendo seeking to have this Court compel Respondent Judge Joseph Bruzzese, Jr., rule on his petitions for postconviction relief. For the following reasons, we dismiss this original action as moot because Respondent has already ruled on Relator's petitions.

{¶2} In 2015, a jury convicted Relator on one count of murder pursuant to R.C. 2903.02(A), an unclassified felony, with an attached firearm specification under R.C. 2941.145. He was also convicted on one count of tampering with evidence in violation of R.C. 2921.12(A)(1). The trial court sentenced Relator to an aggregate prison term of 18 years to life. This Court affirmed Relator's conviction and sentence in *State v. Spring*, 7th Dist. Jefferson No. 15 JE 0019, 2017-Ohio-768, 85 N.E.3d 1080, *appeal not allowed*, 150 Ohio St.3d 1410, 2017-Ohio-6964, 78 N.E.3d 910; *denying motion to reopen*, *State v. Spring*, 7th Dist. Jefferson No. 15 JE 0019, 2017-Ohio-5707, *denying motion for reconsideration*, *State v. Spring*, 7th Dist. Jefferson No. 15 JE 0019, 2017-Ohio-8012, *appeal not allowed*, 151 Ohio St.3d 1527, 2018-Ohio-557, 91 N.E.3d 758.

{¶3} On September 28, 2016, Relator filed a petition for postconviction relief in Respondent's court, alleging ineffective assistance of trial counsel. The state filed a memorandum in opposition on October 11, 2016. Thereafter, Relator filed successive, similar petitions on June 1, 2018, December 4, 2018, March 12, 2019, July 10, 2019, and July 18, 2019. In addition to the successive, repetitive petitions, Relator filed numerous other pleadings which in substance sought to have Respondent rule on his postconviction

claims. Relator has filed the present original action in this Court seeking to compel Respondent to rule on his June 1, 2018 motion.

{¶4} Generally, a petitioner may file for a writ of mandamus or for a writ of procedendo to compel a court to rule on a pending motion. However, “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.” (Citation omitted.) *Pankey v. Mahoning Cty. Court of Common Pleas*, 7th Dist. Mahoning No. 13 MA 27, 2013-Ohio-1617, ¶ 2. To be entitled to a writ of procedendo, “a relator must establish 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 law.” *State ex rel. Miley v. Parrott*, 77 Ohio St.3d 64, 65, 671 N.E.2d 24 (1996).

{¶5} Additionally, “[a] writ of procedendo will not issue to compel the performance of a duty that has already been performed.” *State ex rel. Graham v. Niemeyer*, 106 Ohio St.3d 466, 2005-Ohio-5522, 835 N.E.2d 1250, ¶ 4, quoting *State ex rel. Bortoli v. Dinkelacker*, 105 Ohio St.3d 133, 2005-Ohio-779, 823 N.E.2d 448, ¶ 3. An appellate court “can take judicial notice that the requested act has been performed.” *State ex rel. Stanley v. D’Apolito*, 7th Dist. Mahoning No. 12 MA 218, 2013-Ohio-428, ¶ 8, citing *State ex rel. Grove v. Nadel*, 84 Ohio St.3d 252, 253, 703 N.E.2d 304 (1998).

{¶6} Our review of the trial court’s docket reflects that a journal entry was filed on July 11, 2019, wherein Respondent overruled all of Relator’s petitions filed on or before July 10, 2019, without a hearing. The trial court’s docket also reflects that a judgment entry was filed on August 6, 2019, wherein Respondent overruled Relator’s final petition, filed on July 18, 2019, without a hearing. Relator filed a notice of appeal directed to the

trial court's July 11, 2019 judgment entry and that appeal remains pending before this Court in appellate case number 19 JE 0014.

{¶7} Since Respondent has ruled on all of Relator's petitions that are the subject of this action, the matter is moot. As earlier stated, neither procedendo nor mandamus will compel the performance of a duty that has already been performed. *Martin v. Judges of the Lucas Cty. Court of Common Pleas*, 50 Ohio St.3d 71, 72, 552 N.E.2d 906 (1990). Relator's original action for writ of procedendo is hereby dismissed as moot.

{¶8} Final order. Clerk to service notice as provided by the Rules of Civil Procedure. Costs taxed against Relator.

JUDGE CHERYL L. WAITE

JUDGE GENE DONOFRIO

JUDGE CAROL ANN ROBB