

[Cite as *State ex rel. Harrison v. Gallagher*, 2017-Ohio-7251.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105838

**STATE OF OHIO, EX REL.
LORENZO HARRISON**

RELATOR

vs.

KELLY GALLAGHER, ET AL.

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

Writ of Procedendo
Motion No. 507984
Order No. 509076

RELEASE DATE: August 11, 2017

FOR RELATOR

Lorenzo Harrison, pro se
Inmate No. 563-687
Madison Correctional Institution
1851 State Route 56
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London, Ohio 43140

ATTORNEYS FOR RESPONDENTS

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶1} On May 26, 2017, the relator, Lorenzo Harrison, commenced this mandamus and procedendo writ action against the respondents, Judge Kelly Gallagher and Cuyahoga County Court of Common Pleas, to compel the judge to proceed to judgment on a postconviction relief petition, a motion for expert assistance, and a motion for counsel, all of which he filed on June 13, 2016, in the underlying case, *State v. Harrison*, Cuyahoga C.P. No. CR-08-513945-A. On June 15, 2017, the respondents moved for summary judgment on the grounds of mootness and pleading defects. Attached to the dispositive motion is a copy of a certified journal entry, file-stamped June 1, 2017, in which the respondent judge denied the subject motions. Harrison never filed a response. The June 1, 2017 journal entry establishes that the respondent judge has fulfilled her duty and proceeded to judgment on the subject motions. The court notes that there is no duty to issue findings of fact and conclusions of law for an untimely postconviction relief petition. R.C. 2953.23(A). This writ is moot.

{¶2} The relator has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the relator within the previous five years in any state or federal court. The relator's failure to comply with R.C. 2969.25 warrants dismissal of the complaint for an extraordinary writ. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594, and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

Relator also did not comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. This also is sufficient reason to deny the mandamus, deny indigency status, and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842; *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420; and *Hazel v. Knab*, 130 Ohio St.3d 22, 2011-Ohio-4608, 955 N.E.2d 378 — the defect may not be cured by subsequent filings.

{¶3} Accordingly, this court grants the respondents’ motion for summary judgment and denies the application for a writ of mandamus or procedendo. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶4} Writ denied.

SEAN C. GALLAGHER, JUDGE

MELODY J. STEWART, P.J., and
LARRY A. JONES, SR., J., CONCUR