

[Cite as *State ex rel. McCall v. Gall*, 2017-Ohio-8234.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105972

STATE OF OHIO, EX REL.
TONY McCALL

RELATOR

vs.

THE HONORABLE JUDGE STEVEN E. GALL,
ET AL.

RESPONDENTS

JUDGMENT:
WRITS DENIED

Writs of Mandamus and Procedendo
Motion No. 509281
Order No. 510958

RELEASE DATE: October 18, 2017

FOR RELATOR

Tony McCall, pro se
Inmate No. A167246
Pickaway Correctional Institution
P.O. Box 209
Orient, Ohio 43146-0209

ATTORNEYS FOR RESPONDENT

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

EILEEN T. GALLAGHER, P.J.:

{¶1} On July 7, 2017, the relator, Tony McCall, commenced this mandamus and procedendo action against the respondents, Judge Steven Gall, Clerk of Courts Nailah Byrd, and the Cuyahoga County Prosecutor's Office. He seeks in the underlying cases, *State v. McCall*, Cuyahoga C.P. Nos. CR-81-166002-ZA and CR-81-166093-ZA, (1) to compel the respondents to serve him with a copy of the February 22, 2017 judgment entry denying his motion to withdraw guilty plea, (2) to compel a ruling on his motion to compel the clerk to serve the ruling, (3) to compel a ruling on his February 28, 2017 motion for leave to amend and add claims to his motion to withdraw guilty plea, (4) to compel the respondents to serve that ruling on him, and (5) to compel the prosecutor to serve him with a copy of the March 15, 2017 brief in opposition. On August 4, 2017, the respondents moved for summary judgment on the grounds of mootness. McCall filed a brief in opposition on August 29, 2017.¹ For the following reasons, this court grants the respondents' motion for summary judgment and denies the application for writs of mandamus and procedendo.

{¶2} Attached to the respondents' summary judgment motion are a letter from the clerk of courts stating: "Enclosed are copies of journal entries issued 2/22/2017 in cases CR-81-160093-ZA and CR-81-166002-ZA." and the two journal entries from the underlying cases denying McCall's motions to withdraw his guilty pleas. These

¹Pursuant to a motion for extension of time, this court granted McCall until September 27, 2017, to file his opposition.

attachments establish that the clerk has served the journal entries upon McCall and that his motion to compel service of these entries is moot. McCall admits this in his August 29, 2017 brief.

{¶3} The summary judgment motion also attached certified copies of June 28, 2017 journal entries in which the respondent judge denied the motions for leave to amend the motion to withdraw guilty plea in the two underlying cases. These attachments establish that the judge has fulfilled his duty to rule on the subject motions. It also moots McCall's claim that the clerk serve him with copies of the rulings. An extraordinary writ will not issue to compel a vain act. *State ex rel. Newell v. Gaul*, 8th Dist. Cuyahoga No. 98326, 2012-Ohio-4068.

{¶4} Finally, the respondent prosecutor attached his brief in opposition to McCall's motion for leave to amend. This attachment establishes that McCall's claim for service of the brief is moot.

{¶5} Accordingly, this court grants the respondents' motion for summary judgment and denies the application for writs of procedendo and mandamus. Respondents to pay costs; costs waived. 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).

{¶6} Writs denied.

EILEEN T. GALLAGHER, PRESIDING JUDGE

MELODY J. STEWART, J., and
SEAN C. GALLAGHER, J., CONCUR