

[Cite as *State ex rel. Haddox v. Kraus*, 2017-Ohio-9182.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106281

**STATE OF OHIO, EX REL.
GREGORY R. HADDOX**

RELATOR

vs.

KENNETH A. KRAUS

RESPONDENT

**JUDGMENT:
WRITS DENIED**

Writs of Procedendo and Mandamus
Motion No. 511041
Order No. 512584

RELEASE DATE: December 18, 2017

FOR RELATOR

Gregory R. Haddox, pro se
Inmate No. A661586
Lake Erie Correctional Institution
501 Thompson Road
Conneaut, Ohio 44030

ATTORNEYS FOR RESPONDENT

George F. Lonjak
City of Strongsville Prosecutor
By: John T. Castele
Assistant City of Strongsville Prosecutor
614 West Superior Avenue, Suite 1310
Cleveland, Ohio 44113

TIM McCORMACK, J.:

{¶1} In this procedendo and mandamus action, relator, Gregory Haddox, seeks an order compelling respondent, Kenneth Kraus, a magistrate of the city of Strongsville Mayor's Court, to "dismiss charges" and withdraw a warrant for Haddox's arrest. Respondent has moved for summary judgment on two grounds: (1) Haddox has named the wrong respondent because Kraus has no authority to provide Haddox the relief that he seeks; and (2) the warrant has already been withdrawn and therefore this action is moot. Haddox concedes these arguments. Accordingly, we grant Kraus's motion for summary judgment and deny the application for a writ of mandamus or a writ of procedendo.

{¶2} In order to obtain a writ of mandamus or a writ of procedendo, Haddox must establish, through clear and convincing evidence, that he possesses a clear legal right to the requested relief, that Magistrate Kraus possesses a clear legal duty to provide the requested relief, and that Haddox lacks an adequate remedy in the ordinary course of the law. *State ex rel. Arnold v. Gallagher*, 8th Dist. Cuyahoga No. 105351, 2017-Ohio-4076, ¶ 7, citing *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452. Neither procedendo nor mandamus, however, will compel the performance of a duty that has already been performed. *State ex rel. Howard v. Doneghy*, 102 Ohio St.3d 355, 2004-Ohio-3207, 810 N.E.2d 958, ¶ 2. Under such circumstances, the complaint is moot. *Id.*

{¶3} In his reply to Kraus’s motion for summary judgment, Haddox concedes that the warrant has been recalled. The recall of the warrant therefore effectively renders Haddox’s applications moot.

{¶4} Despite this concession, Haddox nonetheless argues that a “detainer” remains and therefore urges this court “to compel the respondent to forward the recall of the warrant to Bureau of Sentence Computation.” This court, however, cannot use the “strong arm of the law” by way of granting a writ of mandamus or a writ of procedendo unless clear and convincing evidence exists that Kraus has failed to perform a clear legal duty. *See State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967). Here, Haddox’s allegations fail to demonstrate a failure by the respondent to perform a clear legal duty. Moreover, as Haddox even acknowledges, Kraus is a magistrate with the city of Strongsville Mayor’s Court, which was not the court where the complaint was filed or the arrest warrant issued.

{¶5} Accordingly, the court grants the respondent’s motion for summary judgment and denies the writ. Costs assessed against relator; costs waived. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶6} Writs denied.

TIM McCORMACK, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
SEAN C. GALLAGHER, J., CONCUR