

[Cite as *Cornelison v. Russo*, 2018-Ohio-3574.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 107283

---

**ROBERT J. CORNELISON**

RELATOR

vs.

**JUDGE JOHN J. RUSSO**

RESPONDENT

---

**JUDGMENT:**  
**WRIT DENIED**

---

Writ of Procedendo  
Motion No. 519089  
Order No. 520087

**RELEASE DATE:** August 31, 2018

**FOR RELATOR**

Robert J. Cornelison, pro se  
Inmate No. A640775  
Belmont Correctional Institution  
P.O. Box 540  
Saint Clairsville, OH 43950

**ATTORNEYS FOR RESPONDENT**

Michael C. O'Malley  
Cuyahoga County Prosecutor

By: James E. Moss  
Assistant County Prosecutor  
1200 Ontario Street, 8th Floor  
Cleveland, OH 44113

TIM McCORMACK, J.:

{¶1} Relator, Robert J. Cornelison, seeks a writ of procedendo to compel respondent judge to rule on motions to dismiss filed in *State v. Cornelison*, Cuyahoga C.P. No. CR-12-569410-B. As the respondent judge has issued rulings on those motions, this action is moot. Therefore, we grant respondent judge's motion for summary judgment and deny the writ.

### **Background**

{¶2} According to Cornelison's complaint, he was housed in a correctional institution in 2013 when he received notice of pending charges in the above criminal case.

Cornelison alleges that he complied with the provisions of R.C. 2941.401 and properly requested final disposition of the matter. After no further proceedings were held in this case, Cornelison filed motions to dismiss the charges against him on January 28, 2016, August 3, 2016, and again on July 12, 2017. Cornelison asserts that respondent judge failed to rule on any of these motions. On June 8, 2018, he filed the instant action for a writ of procedendo to compel respondent judge to proceed to judgment.

{¶3} In answer, respondent judge filed a motion for summary judgment. There, he asserted that Cornelison's motion to dismiss had been granted and the criminal case had been dismissed with prejudice.<sup>1</sup> Cornelison filed a brief in opposition, but generally admitted that respondent judge had issued rulings on his motions.

---

<sup>1</sup> The trial court's June 11, 2018 journal entry indicates the case was dismissed without prejudice, but a nunc pro tunc entry dated June 13, 2018, states that the dismissal was with prejudice.

### **Standard for Granting a Writ of Procedendo**

{¶4} To be entitled to a writ of procedendo, Cornelison must show (1) a clear legal right to require the court to proceed, (2) a clear legal duty on the part of the court to proceed, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899 (1995). Where a court has refused or unnecessarily delayed in entering judgment, a writ of procedendo is proper to prod the court to proceed to judgment. *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 73 Ohio St.3d 180, 184, 652 N.E.2d 742 (1995).

### **Procedural Requirements for a Writ of Procedendo**

{¶5} An action instituted against a government entity or employee by an incarcerated individual must meet certain requirements set forth in R.C. 2969.25. Failure to comply with these requirements constitutes sufficient reason to dismiss this action. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 696 N.E.2d 594 (1998); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 685 N.E.2d 1242 (1997).

{¶6} R.C. 2969.25(A) requires an inmate who files a civil action to submit an affidavit that lists all the civil actions or appeals that he or she has filed in previous five years. Respondent judge argues that Cornelison failed to comply with this provision because no such affidavit was attached to the complaint. Cornelison argues that he is not required to file such an affidavit because he has not filed any civil actions within the last

five years; citing for support *State ex rel. Wickensimer v. Bartleson*, 123 Ohio St.3d 154, 2009-Ohio-4695, 914 N.E.2d 1045.

{¶7} R.C. 2969.25(C) also requires that an inmate who files a civil action and seeks a waiver of fees shall include an affidavit setting forth all the assets owned by the inmate and a statement of the inmate's account for the preceding six months as certified by the institutional cashier. Respondent judge argues this provision was also ignored in Cornelison's complaint. This could be justification to dismiss the complaint where an affidavit is required. *Martin v. Woods*, 121 Ohio St.3d 609, 2009-Ohio-1928, 906 N.E.2d 1113. However, Cornelison counters that he did not seek waiver of the filing fee. The filing fee was paid in full by a relative. Therefore, the affidavit is not required.

### **The Action has Become Moot**

{¶8} In spite of any argued procedural defect, Cornelison's complaint for a writ of procedendo is denied for a different reason: Mootness. While certified journal entries were not attached to respondent's motion for summary judgment, pursuant to Evid.R. 201, a review of the publicly available docket hosted on the Cuyahoga County Clerk of Court's website in the underlying case indicates that rulings on Cornelison's motions have been issued.<sup>2</sup> In light of these rulings issued on June 11, 2018, Cornelison

---

<sup>2</sup> The Supreme Court of Ohio has approvingly cited cases holding that a court may take notice of a docket that is publicly available via the Internet. *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, \_ 8, citing *Doe v. Golden & Walters, P.L.L.C.*, 173 S.W.3d 260, 265 (Ky.App.2005); *Leatherworks Partnership v. Berk Realty, Inc.*, N.D. Ohio No. 4:04 CV 0784, 2005 U.S. Dist. LEXIS 27887, 2 (Nov. 15, 2005). See also *State v. Chairperson of the*

has obtained the relief he has requested in the present action. Therefore, this action is moot.

{¶9} Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of procedendo. Costs assessed against respondent; 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).

{¶10} Writ denied.

---

TIM McCORMACK, PRESIDING JUDGE

MELODY J. STEWART, J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR