

[Cite as *State ex rel. Wheeler v. Gall*, 2019-Ohio-462.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107854

**ROBERT WHEELER,
STATE OF OHIO, EX REL.**

RELATOR

vs.

HONORABLE STEVEN GALL

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 523101
Order No. 524329

RELEASE DATE: February 5, 2019

FOR RELATOR

Robert Wheeler, pro se
Inmate No. 291499
Allen/Oakwood Correctional Institution
P.O. Box 4501
Lima, Ohio 45802

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
PATRICIA ANN BLACKMON, J.:

{¶1} On October 30, 2018, the relator, Robert Wheeler, commenced this mandamus action against the respondent, Judge Steven Gall,¹ to compel the judge to rule on a motion for leave to file a delayed motion for new trial, which Wheeler filed in the underlying case, *State v. Wheeler*, Cuyahoga C.P. No. CR-93-301088-ZA. On November 21, 2018, the respondent judge, through the Cuyahoga County Prosecutor, moved for summary judgment on the grounds of mootness and pleading defects. Attached to the judge's dispositive motion was a copy of a certified journal entry, file-stamped April 5, 2018, which denied the subject motion. Wheeler never filed a response. The attached journal entry establishes that the respondent fulfilled his duty to rule on the motion and that Wheeler received his desired relief. This case is moot.

¹Judge Steven Gall succeeded Judge Timothy J. McGinty as the judge in the underlying case. Pursuant to Civ.R. 21, this court, sua sponte, replaces Judge Gall for Judge McGinty as the respondent.

{¶2} 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 respondent's motion for summary judgment and denies the application for a writ of mandamus. 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.

PATRICIA ANN BLACKMON, JUDGE

EILEEN T. GALLAGHER, P.J., and
LARRY A. JONES, SR., J., CONCUR