

[THE STATE EX REL.] MORGAN, APPELLANT, v. FAIS, JUDGE, APPELLEE.

[Cite as *State ex rel. Morgan v. Fais*, 146 Ohio St.3d 428, 2016-Ohio-1564.]

Procedendo—Writ properly denied when act requested by relator has already been performed by respondent—Procedendo will not lie to compel performance of act already performed.

(No. 2015-0782—Submitted January 26, 2016—Decided April 19, 2016.)

APPEAL from the Court of Appeals for Franklin County, No. 14AP-910,
2015-Ohio-1514.

Per Curiam.

{¶ 1} We affirm the court of appeals’ judgment denying a petition for a writ of procedendo.

{¶ 2} Relator-appellant, David A. Morgan, was convicted of murder in 1986. In April 2014, while incarcerated, he filed in the trial court a motion to vacate his conviction and sentence. When no action was taken on his motion, Morgan filed a petition in procedendo in the Tenth District Court of Appeals on November 5, 2014.

{¶ 3} On November 18, 2014, respondent-appellee, Judge David W. Fais of the Franklin County Court of Common Pleas, denied Morgan’s trial court motion. Judge Fais, through counsel, then filed a motion to dismiss in the procedendo action, attaching his November 18 entry denying Morgan’s motion. The court of appeals magistrate converted the motion to dismiss to one for summary judgment and recommended that the court of appeals grant the motion. The court of appeals adopted the magistrate’s opinion and denied the writ. Morgan appealed.

{¶ 4} A writ of procedendo will not issue to compel the performance of a duty that has already been performed. *State ex rel. Hazel v. Bender*, 129 Ohio St.3d

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496, 2011-Ohio-4197, 954 N.E.2d 114, ¶ 1; *State ex rel. Howard v. Skow*, 102 Ohio St.3d 423, 2004-Ohio-3652, 811 N.E.2d 1128, ¶ 9; *State ex rel. Grove v. Nadel*, 84 Ohio St.3d 252, 253, 703 N.E.2d 304 (1998).

{¶ 5} Judge Fais has performed the duty requested by ruling on Morgan's motion to vacate. Morgan's action in procedendo is therefore moot, as correctly held by the court of appeals. The judgment denying the writ is affirmed.

Judgment affirmed.

O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, KENNEDY, FRENCH, and O'NEILL, JJ., concur.

David A. Morgan, pro se.

Ron O'Brien, Franklin County Prosecuting Attorney, and Jeffrey C. Rogers,
Assistant Prosecuting Attorney, for appellee.
