

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Preston Mickens,	:	
Relator,	:	
v.	:	No. 11AP-760
Hon. Richard Sheward, Court of Common Pleas,	:	(REGULAR CALENDAR)
Respondent.	:	
	:	

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D E C I S I O N

Rendered on April 10, 2012

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*Preston Mickens, pro se.*

*Ron O'Brien, Prosecuting Attorney, and Paul Thies, for respondent.*

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IN PROCEDENDO  
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

TYACK, J.

{¶ 1} Preston Mickens filed this action in procedendo, seeking a writ to compel Judge Richard Sheward to rule on a petition he filed to contest his reclassification to being a "Tier I Child Victim Offender."

{¶ 2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. Counsel for Judge Sheward filed a motion for summary judgment and appended a copy of an entry journalized by Judge Sheward which ruled upon the petition filed by Mickens. As a result, the magistrate issued a magistrate's

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decision, appended hereto, which includes a recommendation that we grant summary judgment.

{¶ 3} No one has filed objections to the magistrate's decision. No error of law or fact is present on the face of the magistrate's decision. We therefore adopt the findings of fact and conclusions of law contained in the magistrate's decision and grant summary judgment for Judge Sheward.

*Summary judgment granted to  
respondent.*

FRENCH and DORRIAN, JJ., concur.

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**APPENDIX**  
**IN THE COURT OF APPEALS OF OHIO**  
**TENTH APPELLATE DISTRICT**

State of Ohio ex rel. Preston Mickens,	:	
Relator,	:	
v.	:	No. 11AP-760
	:	(REGULAR CALENDAR)
Honorable Richard Sheward,	:	
Court of Common Pleas,	:	
Respondent.	:	
	:	

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**MAGISTRATE'S DECISION**

Rendered on November 21, 2011

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*Preston Mickens, pro se.*

*Ron O'Brien, Prosecuting Attorney, and Paul Thies, for respondent.*

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**IN MANDAMUS**  
**ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

{¶ 4} In this original action, relator, Preston Mickens, an inmate of the Chillicothe Correctional Institution ("CCI") requests that a writ of procedendo issue against respondent, the Honorable Richard Sheward, a judge of the Franklin County Court of Common Pleas.

**Findings of Fact:**

{¶ 5} 1. On September 7, 2011, relator, a CCI inmate, filed this procedendo action against respondent.

{¶ 6} 2. According to the complaint, in the Franklin County Court of Common Pleas, in case No. 99CR-6926, relator was convicted of aggravated robbery and aggravated burglary, both with a gun specification.

{¶ 7} 3. According to the complaint, in December 2007, relator was served a document captioned "Notice of New Classification duties, Tier I Child Victim Offender."

{¶ 8} 4. According to the complaint, relator filed petitions to contest the classification in the Madison County Court of Common Pleas and the Franklin County Court of Common Pleas. According to the complaint, because relator was at the time incarcerated in Madison county, he filed a petition there. He also filed a petition in the county where his conviction occurred, which is Franklin county.

{¶ 9} 5. According to the complaint, in January 2010, his petition was granted by the Madison County Court of Common Pleas.

{¶ 10} 6. According to the complaint, respondent has not ruled on his petition.

{¶ 11} 7. For relief in this action, relator requests that this court order respondent to rule on his petition to contest the classification.

{¶ 12} 8. On October 3, 2011, respondent filed a motion to dismiss, or in the alternative, a motion for summary judgment.

{¶ 13} 9. In support of his motion for summary judgment, respondent submitted a copy of an entry he filed in the common pleas court on September 20, 2011 in case No. 99CR-6926. Respondent's entry states:

For good cause shown, the Court hereby GRANTS Defendant-Petitioner's relief requested in his PETITION TO CONTEST RECLASSIFICATION and requested in Defendant-Petitioner's Motion for Preliminary Disposition. Defendant-Petitioner is not subject to Revised Code Chapter 2950 based on his 2000 conviction. The defendant is not under any statutory duty to verify his current address or to register pursuant to R.C. Chapter 2950. It is hereby ordered that Defendant-Petitioner's name be removed from all sexually oriented lists maintained pursuant to R.C. Chapter 2950.

Additionally, on the authority of *State v. Bodyke* (2010), 128 Ohio St.3d 266, 2010-Ohio-2424, *State v. Johnson* (April 26, 2011), 10th Dist No. 10AP-932, 2011-Ohio-2009, *Core v. State* (2010), 191 Ohio App.3d 651, 2010-Ohio-6292, *State v. Williams* (July 13, 2011), 2011-Ohio-3374, as well as other cases, the Court hereby VACATES Defendant-Petitioner's reclassification as a Tier I offender. The requirements imposed upon Defendant-Petitioner pursuant to the Adam Walsh Act are a nullity.

{¶ 14} 10. On October 5, 2011, the magistrate issued notice that respondent's October 3, 2011 motion for summary judgment is set for submission to the magistrate on October 24, 2011.

{¶ 15} 11. Relator has not responded to the motion for summary judgment.

**Conclusions of Law:**

{¶ 16} It is the magistrate's decision that this court grant respondent's motion for summary judgment.

{¶ 17} Summary judgment is appropriate when the movant demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, said party being entitled to have the evidence construed most strongly in his favor. *Turner v. Turner*, 67 Ohio St.3d 337, 339-40, 1993-Ohio-176; *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 146; *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 115.

{¶ 18} Civ.R. 56(E) states:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

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{¶ 19} Relator's failure to respond to the motion for summary judgment indicates that summary judgment is appropriate here. It is undisputed that relator has received from respondent the relief relator has requested in this action.

{¶ 20} Accordingly, it is the magistrate's decision that this court grant respondent's motion for summary judgment.

/s/Kenneth W. Macke  
KENNETH W. MACKE  
MAGISTRATE

#### **NOTICE TO THE PARTIES**

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).