

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. William Coffman,	:	
Relator,	:	
v.	:	No. 14AP-758
Judge Mark A. Serrott,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on April 28, 2015

William Coffman, pro se.

Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,
for respondent.

IN PROCEDENDO

BROWN, P.J.

{¶ 1} Relator, William Coffman, has filed this original action requesting that this court issue a writ of procedendo ordering respondent, the Honorable Mark A. Serrott, judge of the Franklin County Court of Common Pleas, to rule on certain motions relator alleges are pending in his underlying criminal case. Respondent has filed a motion to dismiss.

{¶ 2} This matter was referred to a magistrate of this court, pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals. The magistrate issued the appended decision, including findings of fact and conclusions of law, and recommended that this court grant respondent's motion to dismiss. No objections have been filed to that decision.

{¶ 3} As there have been no objections filed to the magistrate's decision, and it contains no error of law or other defect on its face, based on an independent review of the file, this court adopts the magistrate's decision. Respondent's motion to dismiss is granted.

Action dismissed.

TYACK and SADLER, JJ., concur.

APPENDIX
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. William Coffman,	:	
Relator,	:	
v.	:	No. 14AP-758
Judge Mark A. Serrott,	:	(REGULAR CALENDAR)
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on December 22, 2014

William Coffman, pro se.

*Ron O'Brien, Prosecuting Attorney, and Jeffrey C. Rogers,
for respondent.*

IN PROCEDENDO
ON RESPONDENT'S MOTION TO DISMISS

{¶ 4} Relator, William Coffman, has filed this original action requesting that this court issue a writ of procedendo ordering respondent, the Honorable Mark A. Serrott, judge of the Franklin County Court of Common Pleas ("common pleas court"), to rule on certain motions relator alleges are pending in his underlying criminal case.

Findings of Fact:

{¶ 5} 1. Relator is an inmate currently incarcerated at Chillicothe Correctional Institution.

{¶ 6} 2. On April 1, 2013, relator filed a "Motion To Vacate Void Sentence and Set Aside the [Sentence] as Volatile [sic] of Ohio Revised Code 2911.02" in the common pleas court.

{¶ 7} 3. On October 2, 2013, relator filed a motion to enforce the plea agreement.

{¶ 8} 4. On September 25, 2014, relator filed this procedendo action alleging that respondent had not yet ruled on his motions.

{¶ 9} 5. Respondent filed a motion to dismiss asserting that relator's motions had been ruled on and, since neither procedendo nor mandamus will compel the performance of a duty that has already been performed, asserting that this court should dismiss this procedendo action.

{¶ 10} 6. Relator has filed a reply to the motion to dismiss wherein he acknowledges that respondent has ruled on his motions. Specifically, relator's memorandum in support provides:

Relator has filed two Motions in Common [Pleas] Court Motion to Vacate filed 4-1-2013 [and] [a]lso a Motion to Enforce Plea, filed 10-2-2013. Motion to Vacate was ruled upon 12-3-2013 which the docket sheet Relator presents as (exhibit A) will reflect. As to the Motion to Enforce Plea[,] the docket sheet simply reflects that a Motion was filed 10-2-2013 and a Entry/Order filed 9-8-2014.

{¶ 11} 7. At this time, although he acknowledges that respondent has, in fact, ruled on his motions, relator indicates that he has not yet received a copy of the judgment entry denying his motion to enforce the plea agreement.

{¶ 12} 8. By entry dated September 8, 2014, respondent did indeed deny relator's motion to enforce the plea agreement, stating:

The Defendant has filed a "Motion to Enforce Plea Agreement" which seems to be a Motion to Withdraw his Plea. The Defendant was sentenced in 1990 and in 2002. The Defendant has delayed 20 years in filing his motion. This time delay is unreasonable and it alone warrants denial of the Defendant[']s motion.

Moreover, the Defendant must prove a manifest injustice and extraordinary circumstances to withdraw his plea.

State v. Smith (1977) 49 Ohio St.2d 264. The Defendant has failed to demonstrate either and has failed to present any probative evidence warranting a hearing. The Defendant in essence is upset by his lengthy prison sentence. However, the Defendant fails to acknowledge that he has multiple convictions and violated parole and probation. Therefore, the Defendant[']s sentences were run consecutively and the Defendant was notified of that fact.

The Defendant's remedy at this time is to file for Judicial Release when he is eligible. For all these reasons, the Defendant's Motion is DENIED in its entirety.

{¶ 13} 9. The matter is currently before the magistrate on respondent's motion to dismiss.

Conclusions of Law:

{¶ 14} For the reasons that follow, it is this magistrate's decision that this court should dismiss relator's procedendo action.

{¶ 15} In order to be entitled to a writ of procedendo, a relator must establish a clear legal right to require that court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Miley v. Parrott*, 77 Ohio St.3d 64, 65 (1996). A writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *Id.*

{¶ 16} An " 'inferior court's refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy.' " *State ex rel. Dehler v. Sutula*, 74 Ohio St.3d 33, 35 (1995), quoting *State ex rel. Levin v. Sheffield Lake*, 70 Ohio St.3d 104, 110 (1994).

{¶ 17} Procedendo is an order from a court of superior jurisdiction to proceed to judgment: it does not attempt to control the inferior court as to what the judgment should be. *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462 (1995).

{¶ 18} A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545 (1992). In reviewing the complaint,

the court must take all the material allegations as admitted and construe all reasonable inferences in favor of the nonmoving party. *Id.*

{¶ 19} In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that relator can prove no set of facts entitling him to recovery. *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242 (1975). As such, a complaint for a writ of mandamus or procedendo is not subject to dismissal under Civ.R. 12(B)(6) if the complaint alleges the existence of a legal duty by the respondent and the lack of an adequate remedy at law for relator with sufficient particularity to put the respondent on notice of the substance of the claim being asserted against it, and it appears that relator might prove some set of facts entitling him to relief. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.*, 72 Ohio St.3d 94 (1995). For the following reasons, respondent's motion should be granted and relator's complaint should be dismissed.

{¶ 20} Relator acknowledges that respondent has ruled on both motions but has not received a copy of the court's entry denying his motion to enforce the plea agreement. As such, it appears that relator truly seeks to compel the clerk's office to send him a copy.

{¶ 21} Inasmuch as respondent has performed the acts which relator seeks to compel by way of this procedendo action, this court should grant respondent's motion and dismiss relator's action.

/S/ MAGISTRATE
STEPHANIE BISCA

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).