

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

DARNELL D. HILL,	:	<b>PER CURIAM</b>
	:	<b>MEMORANDUM OPINION</b>
Relator,	:	
- vs -	:	<b>CASE NO. 2011-T-0094</b>
BENNIE KELLY, WARDEN,	:	
Respondent.	:	

Original Action for Writ of Procedendo.

Judgment: Writ dismissed.

*Darnell D. Hill*, pro se, PID: A203-099, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Relator).

*Bennie Kelly*, pro se, Warden, Trumbull Correctional Institution, P.O. Box 901, Leavittsburg, OH 44430-0901 (Respondent).

PER CURIAM.

{¶1} This matter is before the court pursuant to the “motion for a writ of procedendo” filed by relator, Darnell D. Hill, against respondent, Bennie Kelly, Warden of the Trumbull Correctional Institution. Despite respondent’s failure to respond to the motion, we sua sponte dismiss relator’s motion.

{¶2} In his motion, relator alleges that on July 22, 2010, he filed a petition for a writ of habeas corpus, alleging that respondent had violated his constitutional rights by illegally detaining him. He alleges that respondent failed to respond to that petition.

{¶3} Relator alleges that, because respondent failed to respond to his petition for a writ of habeas corpus, on August 30, 2010, relator filed a motion for judgment on the pleadings. He alleges that the Honorable Andrew W. Logan, Judge of the Trumbull County Court of Common Pleas, had 180 days, i.e., until February 28, 2011, to rule on his motion for judgment on the pleadings. He alleges that because Judge Logan did not rule on his motion by February 28, 2011, relator is entitled to a writ of procedendo ordering Judge Logan to grant his petition for a writ of habeas corpus and ordering respondent to release him from custody.

{¶4} Initially, we note that a court may sua sponte dismiss a petition for an extraordinary writ when it is improperly captioned. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 227; *Turner v. State*, 8th Dist. No. 94292, 2010-Ohio-683, at ¶2; *Barry v. Galvin*, 8th Dist. No. 85990, 2005-Ohio-2324, at ¶2. Further, sua sponte dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint. *State ex rel. Thompson v. Spon*, 83 Ohio St.3d 551, 553, 1998-Ohio-298; *State ex rel. Bruggeman v. Ingraham*, 87 Ohio St.3d 230, 231, 1999-Ohio-27.

{¶5} Relator's motion for a writ of procedendo must be denied because it is improperly captioned. The application for a writ of procedendo “\*\*\*\* must be by petition, in the name of the state on the relation of the person applying.” (Emphasis sic.) *Maloney*, supra, quoting *Gannon v. Gallagher* (1945), 145 Ohio St. 170; see, also, *Barry*, supra; *Ezzone v. Bruening* (Dec. 31, 1996), 11th Dist. No. 96-L-105, 1996 Ohio

App. LEXIS 5941. “The failure to caption an original action properly constitutes sufficient grounds for dismissing the petition.” *Barry*, supra.

{¶6} First, a request for a writ must be commenced by petition, rather than by motion. *Myles v. Wyatt* (1991), 62 Ohio St.3d 191. A request for a writ made by way of a motion must be overruled pursuant to Civ.R. 12(B)(6). *Id.* Here, because relator presented his request by way of a motion, his motion must be dismissed.

{¶7} Second, the failure to bring an action for a writ of procedendo in the name of the state on the relation of the person applying for the writ constitutes sufficient grounds to dismiss the petition. *Barry*, supra; *Ezzone*, supra. Here, the caption of the motion does not indicate that the request is made in the name of the state on the relation of Hill. Instead, the motion was filed by Hill in his individual capacity. For this additional reason, relator’s motion must be dismissed.

{¶8} Third, pursuant to Civ.R. 10(A), the caption of a complaint must include the addresses of the parties. *Turner*, supra, at ¶2. Here, relator has failed to include the addresses of the parties in the caption. For this additional reason, the motion must be dismissed.

{¶9} Further, relator’s motion for a writ of procedendo is procedurally defective because he has failed to comply with the affidavit requirement of R.C. 2969.25. Pursuant to this statute, relator was required to attach to his request for a writ of procedendo an affidavit that describes each civil action or appeal filed by him within the previous five years in any state or federal court. It is well settled that a petitioner’s failure to comply with R.C. 2969.25 warrants the dismissal of the complaint for a writ of procedendo. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-

218; *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117; *State ex rel. Davis v. Gaul*, 8th Dist. No. 87884, 2006-Ohio-2299, at ¶2 (“Davis’ failure to comply with R.C. 2969.25 warrants the dismissal of the complaint for a writ of procedendo”).

{¶10} In any event, even if relator’s motion was not procedurally defective, it would still lack merit. As a general proposition, a writ of procedendo is a civil judgment in which a court of superior jurisdiction orders a court of inferior jurisdiction to make a determination on a pending matter. *State ex rel. Grove v. Nadel*, 81 Ohio St.3d 325, 326, 1998-Ohio-624.

{¶11} The writ of procedendo is usually employed against a *judge* who either has refused to issue a judgment or has taken an inordinate amount of time to render a judgment. *State ex rel. Doughty v. Campbell*, 11th Dist. No. 2002-T-0112, 2002-Ohio-6466, at ¶4, citing *State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 532, 1999-Ohio-422. In *Doughty*, supra, the relator admitted in his petition that the respondent Evelyn Shelton was the Clerk for the Trumbull County Central District Court. This court held that because the clerk was not a judge, there were no circumstances in which a writ of procedendo would lie against her. *Id.* at ¶5. For this reason, this court dismissed the petition. *Id.*

{¶12} Based on our review of the allegations of relator’s motion, he is not entitled to the writ he seeks. As noted above, a writ of procedendo can only be directed against a judge. Thus, the only appropriate respondent is a judge. Since the only named respondent in this case is the warden, there are no circumstances in which a writ of procedendo would lie to require a court to proceed to judgment.

{¶13} Accordingly, we sua sponte dismiss relator's request for a writ of procedendo.

DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J.,  
concur.