

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

LYNDAL KIMBLE,	:	PER CURIAM OPINION
Relator,	:	
- vs -	:	CASE NO. 2012-T-0033
HONORABLE WYATT MCKAY, JUDGE,	:	
COURT OF COMMON PLEAS	:	
TRUMBULL COUNTY, OHIO,	:	
Respondent.	:	

Original Action for Writ of Procedendo.

Judgment: Petition Dismissed.

Lyndal Kimble, pro se, PID: A490926, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030 (Relator).

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Respondent).

PER CURIAM.

{¶1} This matter is before the court pursuant to the “Petition for Writ of Procedendo,” filed by relator, Lyndal Kimble, against respondent, Honorable Wyatt McKay, Judge, Court of Common Pleas. For the reasons that follow, we sua sponte dismiss the petition.

{¶2} Kimble was indicted on May 7, 2004, for the following offenses: Counts 1-8: trafficking in cocaine, fifth-degree felonies, in violation of R.C. 2925.03(A)(1) & (C)(4)(a); Count 9: aggravated possession of drugs, a fifth-degree felony, in violation of R.C. 2925.11(A) & (C)(4)(c); Count 10: possession of cocaine, a third-degree felony, in violation of R.C. 2925.11(A) & (C)(4)(c); and Count 11: possession of drugs, a misdemeanor, in violation of R.C. 2925.11(A) & (C)(2)(a). A jury trial commenced on April 11, 2005. The jury found Kimble not guilty on Count 9. The court acquitted Kimble of Count 11. The jury convicted Kimble on the remaining counts, with Count 10 being reduced to a fifth-degree felony. Kimble was sentenced to ten months imprisonment each for Counts 1 through 8 and Count 10, the sentences to be served consecutively to each another, for a total of 90 months in prison.

{¶3} Kimble appealed his conviction, and this court affirmed his conviction in *State v. Kimble*, 11th Dist. No. 2005-T-0086, 2006-Ohio-6863.

{¶4} Kimble alleges in his petition that on January 21, 2011, he filed a motion in the trial court to return property not subject to forfeiture, and on June 16, 2011, he filed a motion to vacate and correct his sentence. Kimble alleges in his petition that the trial court has refused or unnecessarily delayed ruling on his motions.

{¶5} A writ of procedendo is a civil judgment in which a court of superior jurisdiction orders a court of inferior jurisdiction to proceed to judgment. *Yee v. Erie Cty. Sheriff's Dept*, 51 Ohio St.3d 43, 45 (1990).

{¶6} A writ of procedendo is appropriate when a court has refused to enter judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. McKinney v. McKay*, 11th Dist. No. 2011-T-0039, 2011-Ohio-3756, ¶17, citing *State ex rel.*

Crandall, Pheils & Wisniewski v. DeCessna, 73 Ohio St.3d 180, 184 (1995). 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). In order to be entitled to a writ of procedendo, a relator must establish a clear legal right to require the 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 the law. *McKinney, supra*; *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462 (1995).

{¶7} Initially, we note that a court may sua sponte dismiss a petition for an extraordinary writ when it is improperly captioned. *Hill v. Kelly*, 11th Dist. No. 2011-T-0094, 2011-Ohio-6341, ¶4, citing *Maloney v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 227 (1962). “The failure to caption an original action properly constitutes sufficient grounds for dismissing the petition.” *Brody v. Lucci*, 11th Dist. No. 2011-L-139, 2012-Ohio-1132, ¶21, quoting *Barry v. Galvin*, 8th Dist. No. 85990, 2005-Ohio-2324, ¶2. 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 deleted.) *Maloney, supra*, quoting *Gannon v. Gallagher*, 145 Ohio St. 170 (1945); accord, *Hill, supra*, at ¶5. “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.” *Brody, supra*, citing *Hill, supra*, at ¶7.

{¶8} Applying these principles to the instant case, the caption of relator’s petition does not indicate that the application for a writ of procedendo is made in the

name of the state on the relation of Kimble. Instead, the petition was filed by Kimble in his individual capacity. For this reason alone, relator's petition must be dismissed.

{¶9} In view of the foregoing analysis, we dismiss Kimble's petition for writ of procedendo at his costs.

CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J., THOMAS R. WRIGHT, J.,
concur.