

COURT OF APPEALS
MORROW COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.,
BRIAN A. LEE

Petitioner

-vs-

HOWARD E. HALL, JUDGE

Respondent

: JUDGES:
:
: Hon. W. Scott Gwin, P.J.
: Hon. John W. Wise, J.
: Hon. Julie A. Edwards, J.
:
: CASE NO. 08-CA-6
:
: OPINION

CHARACTER OF PROCEEDING:

Petition for Writ of Procedendo

JUDGMENT:

WRIT DISMISSED

DATE OF JUDGMENT ENTRY:

October 2, 2008

APPEARANCES:

For Petitioner – pro se:

BRIAN A. LEE - #427-325
Pickaway Correctional Inst.
P.O. Box 209
Orient, OH 43146-0209

For Respondent:

BRENT W. YAGER
Morrow County Assistant Prosecutor
60 East High Street
Mt. Gilead, OH 43338

Edwards, J.,

{¶1} On May 13, 2008, Petitioner Brian Lee filed a Complaint for Writ of Procedendo requesting the trial court be ordered to rule on Petitioner's "Motion for Reduction of Prison term for Related Days of Confinement." The motion was filed with the trial court on October 26, 2007. Respondent has filed a motion to dismiss suggesting the relief requested has been rendered by the trial court; therefore, the Complaint is moot. Petitioner has not filed a response to the motion to dismiss. The trial court issued a ruling on Petitioner's underlying motion on June 3, 2008.

{¶2} To be entitled to the issuance of a writ of mandamus, the Petitioner must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41, 324 N.E.2d 641, citing *State ex rel. National City Bank v. Bd. of Education* (1977), 520 Ohio St.2d 81, 369 N.E.2d 1200.

{¶3} The Supreme Court held in *Madsen*, "Mandamus will not issue to compel an act that has already been performed." *State ex rel. Scruggs v. Sadler*, 102 Ohio St.3d 160, 2004-Ohio-2054, 807 N.E.2d 357, ¶ 5. *State ex rel. Madsen v. Jones* (2005), 106 Ohio St.3d 178, *179, 833 N.E.2d 291, **292.

{¶4} Because the relief sought has already been rendered by the trial court, Petitioner has no clear right to the relief prayed for, and the Respondent has no clear legal duty to perform an act which it has already performed. *State ex rel. Lewis v.*

Boggins, 2007 WL 4395630 (Ohio App. 5 Dist.). Therefore, we find the Petition for Writ of Procedendo must be dismissed.

WRIT DISMISSED.

COSTS TO PETITIONER.

By: Edwards, J.
Gwin, P.J. and
Wise, J. concur

HON. JULIE A. EDWARDS

HON. W. SCOTT GWIN

HON. JOHN W. WISE

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-VS- Petitioner

HOWARD E. HALL

Respondent

.....

CASE NO. 08-CA-6

JUDGMENT ENTRY

For the reasons stated in the Memorandum-Opinion on file, Petitioner's Writ of Procedendo is hereby dismissed. Costs taxed to Petitioner.

HON. JULIE A. EDWARDS

HON. W. SCOTT GWIN

HON. JOHN W. WISE