

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE EX REL., PHILLIP MALONE

Relator

-VS-

STARK COUNTY COURT,
JUDGE JOHN HAAS

Respondent

JUDGES:

Hon. Patricia A. Delaney, P.J.

Hon. William B. Hoffman, J.

Hon. Sheila G. Farmer, J.

Case No. 2011CA00273

O P I N I O N

CHARACTER OF PROCEEDING:

Writ of Procedendo

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

May 7, 2012

APPEARANCES:

For Relator

For Respondent

PHILLIP MALONE, PRO SE
NCCTF - #593-956
2000 South Avon Belden Road
Grafton, Ohio 44044

JOHN D. FERRERO
Stark County Prosecuting Attorney

RONALD MARK CALDWELL
Assistant Prosecuting Attorney
Stark County Prosecutor's Office
110 Central Plaza South – Suite 510
Canton, Ohio 44702-1413

Hoffman, J.

{¶1} Relator, Phillip Malone, has filed a complaint requesting this Court issue a writ of procedendo compelling Judge John Haas to issue a ruling on a Motion to Release Vehicle from Impound in Stark County Common Pleas Case Number 2010CR01523. Respondent has filed a motion to dismiss on the basis the cause of action has become moot.

{¶2} The instant complaint was filed on December 9, 2011. The trial court issued a ruling on the motion in the criminal case on January 10, 2012.

{¶3} The Supreme Court has held, “Neither procedendo nor mandamus will compel the performance of a duty that has already been performed. *State ex rel. Grove v. Nadel* (1998), 84 Ohio St.3d 252, 253, 703 N.E.2d 304, 305.” *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 318, 725 N.E.2d 663, 668.

{¶4} Because the requested relief has already been obtained, we find the complaint for writ of mandamus is moot and grant the motion to dismiss.

{¶5} MOTION TO DISMISS GRANTED.

{¶6} CAUSE DISMISSED.

{¶7} COSTS TO RELATOR.

{¶8} IT IS SO ORDERED.

By: Hoffman, J.

Delaney, P.J. and

Farmer, J. concur

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ Patricia A. Delaney

HON. PATRICIA A. DELANEY

s/ Sheila G. Farmer

HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
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-vs-

STARK COUNTY COURT,
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JUDGMENT ENTRY

Case No. 2011CA00273

For the reasons stated in our accompanying Opinion, we find the complaint for writ of mandamus is moot and grant the motion to dismiss. Costs to Relator.

MOTION TO DISMISS GRANTED.

CAUSE DISMISSED.

COSTS TO RELATOR.

IT IS SO ORDERED.

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ Patricia A. Delaney

HON. PATRICIA A. DELANEY

s/ Sheila G. Farmer

HON. SHEILA G. FARMER

