

[Cite as *Pearson v. Branstool*, 2013-Ohio-3885.]

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

ROBERT PEARSON

Relator

-vs-

JUDGE W. DAVID BRANSTOOL

Respondent

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 13-CA-46

OPINION

CHARACTER OF PROCEEDING:

Writ for Mandamus/Procedendo

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

September 9, 2013

APPEARANCES:

For Relator

ROBERT PEARSON, PRO SE  
Marion Correctional Institution  
#547-179  
P.O. Box 57  
Marion, Ohio 43301

For Respondent

MARK A. ZANGHI  
Assistant Prosecuting Attorney  
20 South Second Street, 4th Floor  
Newark, Ohio 43055

*Hoffman, P.J.*

{¶1} Relator Robert Pearson has filed a “Complaint/Petition for Mandamus and/or Writ of Procedendo under the Jurisdiction of Article IV, Section 3 of the Ohio Constitution.” Relator requests Respondent be ordered to rule on a motion filed by Relator on April 28, 2011. Respondent has filed a motion to dismiss arguing the relief sought has already been obtained and arguing Relator has failed to meet the procedural requirements for a writ of mandamus.

{¶2} To be entitled to the issuance of a writ of mandamus, the Relator 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 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} Respondent ruled on Relator’s April 28, 2011 motion on July 12, 2011. Because the relief sought has already been rendered by the trial court, Relator 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, a writ of mandamus will not issue.

{¶15} 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 law.” *Miley*, supra, at 65, citing *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas* (1995), 72 Ohio St.3d 461, 462. The Supreme Court has noted, “The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. It does not in any case attempt to control the inferior court as to what that judgment should be.” *State ex rel. Davey v. Owen*, 133 Ohio St. 96, \*106, 12 N.E.2d 144, \* \*149 (1937).

{¶16} Because Respondent has issued a ruling on Relator’s motion, the request for a writ of procedendo has become moot.

{¶17} For these reasons, Respondent’s Motion to Dismiss is granted.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

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HON. WILLIAM B. HOFFMAN

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HON. SHEILA G. FARMER

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HON. PATRICIA A. DELANEY

