

[Cite as *Monk v. Marcelain*, 2014-Ohio-2131.]

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

DANIEL L. MONK

Relator

-vs-

JUDGE THOMAS M. MARCELAIN

Respondent

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 13-CA-116

OPINION

CHARACTER OF PROCEEDING:

Writ of Procedendo

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

May 12, 2014

APPEARANCES:

For Relator

For Respondent

DANIEL MONK, PRO SE  
Inmate No. A646845  
Chillicothe Correctional Institution  
P.O. Box 5500  
15802 State Route 104 N.  
Chillicothe, Ohio 45601

KENNETH W. OSWALT  
Licking County Prosecutor

By: ANTHONY W. STOCCO  
Assistant Prosecuting Attorney  
20 South Second Street, Fourth Floor  
Newark, Ohio 43055

*Hoffman, P.J.*

{¶1} Relator, Daniel L. Monk, has filed a complaint for Writ of Procedendo. Relator requests Respondent Judge Thomas M. Marcelain be ordered to rule on a motion filed in the trial court on July 23, 2013. On December 18, 2013 Respondent ruled upon the motion. Respondent has filed a motion to dismiss the instant Petition because his ruling upon the motion has made the petition moot.

{¶2} 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).

{¶3} The Supreme Court has held procedendo will not issue where the requested relief has been obtained, “Neither procedendo nor mandamus will compel the performance of a duty that has already been performed.” *State ex rel. Kreps v. Christiansen*, 88 Ohio St.3d 313, 318, 725 N.E.2d 663, 668 (Ohio,2000).

{¶4} Because Respondent has issued a ruling on Relator's motion, the request for a writ of procedendo has become moot. For this reason, Respondent's Motion to Dismiss is granted.

By: Hoffman, P.J.

Wise, J. and

Baldwin, J. concur