

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ADAM POULTON	:	JUDGES:
	:	Hon. Sheila G. Farmer, .J.
Petitioner	:	Hon. William B. Hoffman, P.J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
HONORABLE JUDGE	:	Case No. CT2015-0014
KELLY J. COTTRILL	:	
	:	
Respondent	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Writ of Procedendo

JUDGMENT: Dismissed

DATE OF JUDGMENT: September 16, 2015

APPEARANCES:

For Petitioner

For Respondent

ADAM POULTON, Pro Se
Inmate No. 686-056
Ross Correctional Institution
Chillicothe, OH 45601

NO APPEARANCE

Farmer, J.

{¶1} Relator, Adam Poulton, has filed a Petition for the Issuance of Writ of Procedendo against Respondent, Judge Kelly J. Cottrill of the Muskingum County Court of Common Pleas. Relator seeks an order requiring Respondent to rule on a motion filed in the trial court titled “Petition to Vacate or Set Aside Judgment of Conviction or Sentence” which was filed on December 19, 2013. Relator subsequently filed a “Supplemental Memorandum in Support of the Petition for the Issuance of Writ of Procedendo” explaining Respondent did rule on the motion, however, Relator argues the writ should still issue because Respondent did not issue findings of fact and conclusions of law.

{¶2} However, the Supreme Court has held a writ of 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* (2000), 88 Ohio St.3d 313, 318, 725 N.E.2d 663, 668.

{¶3} It appears Respondent has now ruled on the December 19, 2013 motion by way of its entry dated July 9, 2015. Because Respondent has ruled on the motion in question, the instant petition has become moot. For this reason, the instant petition is dismissed.

{¶4} Relator argues in his memorandum that the complaint is not moot because the trial court did not issue findings of fact and conclusions of law. Relator did not provide a copy of the entry issued by the trial court. Without a copy of the entry, we have no way of determining whether the trial court did or did not issue findings of fact and conclusions of law. Further, a trial court is not always required to issue findings of

fact and conclusions for example if a petition is found to be successive or untimely. See *State ex rel. Bunting v. Haas*, 102 Ohio St.3d 161, 163, 2004-Ohio-2055, 807 N.E.2d 359, 361, ¶ 11 (2004) (no duty to issue findings of fact and conclusions of law on successive or untimely petitions for post-conviction relief.).

{¶5} Because the petition in this case does not contain sufficient information for us to find Respondent has a clear legal duty to issue findings of fact and conclusions of law in this particular case, we find Relator has failed to demonstrate he is entitled to the requested writ.

{¶6} The petition for the issuance of writ of procedendo is dismissed for failure to state a claim upon which relief may be granted.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

SGF/as