

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio, ex rel.
Tyrone R. Johnson

Court of Appeals No. L-13-1098

Relator

v.

Judge James D. Jensen

DECISION AND JUDGMENT

Respondent

Decided: July 11, 2013

* * * * *

Tyrone R. Johnson, pro se.

* * * * *

OSOWIK, J.

{¶ 1} On May 30, 2013, relator, Tyrone R. Johnson, filed a petition for a writ of procedendo against respondent, Judge James D. Jensen of the Lucas County Court of Common Pleas. In the petition, relator asks this court to compel respondent to rule on a motion to dismiss the indictment in criminal case No. CR0200603545. In support of his petition, relator states that his motion to dismiss was filed on June 27, 2012, and that, to

date, respondent has not ruled on his motion. Attached to relator's motion is a file-stamped copy of the motion to dismiss the indictment in case No. CR0200603545, dated June 27, 2012, and a copy of the criminal indictment issued by the Lucas County Grand Jury. Also attached to the petition is a copy of a "Motion to Alter, Amend or Correct Judgment or in the Alternative, Vacate Judgment" which was file-stamped on the same day as the motion to dismiss the indictment. Additional attachments include relator's affidavit of indigency and an "Affidavit of Verity," and a copy of the trial court's journal in criminal case No. CR0200603545.

{¶ 2} In order to obtain a writ of procedendo, relator must show that "he has a clear legal right to the relief, that [respondent] has a clear legal duty to provide the relief, and that [relator] has no adequate remedy at law." *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 7, citing *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899 (1995). "A writ of procedendo is proper when a court has refused to enter judgment or has unnecessarily delayed proceeding to judgment." *Id.*, citing *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 73 Ohio St.3d 180, 184, 652 N.E.2d 742 (1995).

{¶ 3} In addition, if the relator in an action for procedendo is acting pro se and is also incarcerated, he or she must follow the requirements of R.C. 2969.25, which states:

A) At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal

of a civil action that the inmate has filed in the previous five years in any state or federal court. The affidavit shall include all of the following for each of those civil actions or appeals:

- (1) A brief description of the nature of the civil action or appeal;
- (2) The case name, case number, and the court in which the civil action or appeal was brought;
- (3) The name of each party to the civil action or appeal;
- (4) The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate's counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award.

* * *

{¶ 4} A review of the record shows that relator's "Motion to Alter, Amend or Correct Judgment or in the Alternative, Vacate Judgment," was journalized in case No. CR0200603545 on June 27, 2012. However, the journal does not reflect the filing of relator's motion to dismiss the indictment. Accordingly, we cannot say that the trial court has a clear legal duty to rule on relator's motion. In addition, relator has not filed an affidavit in compliance with R.C. 2969.25 along with his petition. Accordingly, the

petition is subject to dismissal on that basis. *See State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 696 N.E.2d 594 (1998).

{¶ 5} Relator's petition for a writ of procedendo is dismissed. Court costs of these proceedings are assessed to relator.

Writ denied.

Arlene Singer, P.J.

Thomas J. Osowik, J.

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

JUDGE

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
