

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

State of Ohio, ex rel. André D. Rice

Court of Appeals No. L-19-1015

Relator

v.

Honorable Judge Dean P. Mandros

DECISION AND JUDGMENT

Respondent

Decided: February 20, 2019

* * * * *

André D. Rice, pro se.

* * * * *

SINGER, J.

{¶ 1} Relator, André D. Rice, an inmate at the Trumbull Correctional Institution in Trumbull County, Ohio, has petitioned for a writ of procedendo, requesting this court to compel the trial court to make a ruling on his April 17, 2018 “post-conviction motion for allied offenses merger resentencing.”

{¶ 2} “Procedendo is an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment.” *State ex rel. Draper v. State*, 10th Dist. Franklin No. 07AP-357, 2007-Ohio-5581, ¶ 17, citing *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 462, 650 N.E.2d 899 (1995). “The writ does not in any case attempt to control the inferior court as to what that judgment might be.” *Id.* “A writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.” *Id.*

{¶ 3} R.C. 2969.25 provides that, at the time of petitioning for a writ of procedendo, an inmate must “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.” *See Draper* at ¶ 2-4 (dismissing because of failure to comply with R.C. 2969.25).

{¶ 4} Here, we find relator failed to submit an affidavit as to prior actions.

{¶ 5} Accordingly, and based on the foregoing ground, we decline to issue the writ and the petition is not well-taken and is denied. Relator is ordered to pay the costs of this action. The clerk is directed to serve the parties with notice of this judgment and its date of entry on the journal pursuant to Civ.R. 58(B).

Writ denied.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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