

[Cite as *State ex rel. Jordan v. Nunner*, 2015-Ohio-1901.]

STATE OF OHIO, HARRISON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO, ex rel. ERIC SEAN  
JORDAN,

RELATOR,

V.

JUDGE NUNNER, HARRISON COUNTY  
COURT OF COMMON PLEAS,

RESPONDENT.

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CASE NO. 15 HA 1

OPINION  
AND  
JUDGMENT ENTRY

CHARACTER OF PROCEEDINGS:

Petition for Writ of Procedendo

JUDGMENT:

Dismissed

APPEARANCES:

For Relator

Eric Sean Jordan, Pro-se  
#A518-591  
Madison Correctional Institution  
1851 S.R. 56  
P.O. Box 740  
London, Ohio 43140-0740

For Respondent

Honorable Michael K. Nunner  
80135 Jackson Road  
Cadiz, Ohio 43907

JUDGES:

Hon. Gene Donofrio  
Hon. Cheryl L. Waite  
Hon. Mary DeGenaro

Dated: May 8, 2015

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PER CURIAM.

Relator Eric Sean Jordan has filed a pro se petition for a writ of procedendo asking this court to compel Respondent Judge Nunner who is sitting by assignment on the Harrison County Common Pleas Court to rule on his motion for judicial release and motion to expedite judgment.

Following a jury trial, Relator was convicted of unlawful sexual conduct with a minor, sexual battery, and three counts of rape. After certain offenses of allied import were merged, the trial court sentenced Relator to consecutive terms of eight and ten years for an aggregate sentence of 18 years in prison.

According to Relator, he filed a motion for judicial release in the trial court on April 18, 2014. Having received no response to his motion from the state and no ruling on the motion from the court, approximately six months later on October 30, 2014, Relator filed a motion to expedite judgment. That same day, the state filed an objection to Relator's motion for judicial release. Relator filed a reply to the state's objection on November 12, 2014.

On January 29, 2015, Relator, proceeding pro se, filed the petition for writ of procedendo, which is presently before this Court, seeking to have Respondent Judge Nunner, who is sitting by assignment on the Harrison County Common Pleas Court, to rule on his motion for judicial release and motion to expedite judgment. Respondent has filed a motion to dismiss indicating that he has ruled on the motions.

The criteria for relief in procedendo are well-established. The relator must demonstrate: (1) a clear legal right to proceed in the underlying matter; and (2) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Charvat v. Frye*, 114 Ohio St.3d 76, 2007-Ohio-2882, 868 N.E.2d 270, ¶ 13. A writ of procedendo is appropriate when "a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment." *State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 532, 705 N.E.2d 1227 (1999).

However, as counsel for Respondent points out in his motion to dismiss, he ruled on Relator's motion during the pendency of this matter on March 24, 2015. Respondent has attached as an exhibit to his motion to dismiss a copy of the trial court's March 24, 2015 judgment entry in which it denied Relator's motion for judicial

release. Relator acknowledges the March 15, 2014 judgment entry in a reply to Respondent's motion to dismiss he filed with this court on April 6, 2015. He agrees that his petition for a writ of procedendo is now moot, but asks that this Court hold Respondent responsible for any and all court costs since it took his having to file the petition to obtain a ruling on his motion for judicial release.

Since the trial court has ruled on his motion, his petition for a writ of procedendo before this court is moot. "Neither procedendo nor mandamus will compel the performance of a duty that has already been performed." *Martin v. Judges of the Lucas Cty. Court of Common Pleas*, 50 Ohio St.3d 71, 72, 552 N.E.2d 906 (1990). As such, Relator's petition for writ of procedendo is hereby dismissed as moot.

No costs assessed.

Donofrio, P.J. concurs.

Waite, J. concurs.

DeGenaro, J. concurs.