

[Cite as *State ex rel. Ashby v. Sweeney*, 2016-Ohio-3034.]

STATE OF OHIO, MAHONING COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

STATE ex rel. MICHAEL ASHBY,	)	
	)	
RELATOR,	)	
	)	
V.	)	CASE NO. 16 MA 0043
	)	
JUDGE MAUREEN A. SWEENEY,	)	OPINION
	)	AND
RESPONDENT.	)	JUDGMENT ENTRY

CHARACTER OF PROCEEDINGS: Petition for Writ of Procedendo

JUDGMENT: Dismissed

APPEARANCES:

For Relator

Michael Ashby, Pro-se  
A654-526  
2500 South Avon Beldon Road  
Grafton, Ohio 44044

For Respondent

Paul Gains  
Prosecutor  
Ralph M. Rivera  
Assistant Prosecutor  
21 W. Boardman St., 6<sup>th</sup> Floor  
Youngstown, Ohio 44503

JUDGES:

Hon. Gene Donofrio  
Hon. Cheryl L. Waite  
Hon. Carol Ann Robb

Dated: May 12, 2016

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PER CURIAM.

{¶1} Relator Michael Ashby has filed a pro se complaint for a writ of procedendo asking this Court to compel Respondent Judge Maureen Sweeney of the Mahoning County Common Pleas Court to rule on a motion to return seized property he filed in that court on December 8, 2015. Counsel for Respondent has filed a motion to dismiss indicating that Respondent has already ruled upon the motion.

{¶2} Entitlement to a writ of procedendo requires the relator to demonstrate: (1) a clear legal right to require the court to proceed, (2) a clear legal duty on the part of the court to proceed, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 7. “A writ of procedendo is proper when a court has refused to enter judgment or has unnecessarily delayed proceeding to judgment.” *Id.*

{¶3} As counsel for Respondent points out in their motion to dismiss, Respondent ruled on Relator’s motion during the pendency of this matter on April 7, 2016. Respondent has attached as an exhibit to the motion to dismiss a copy of the trial court’s April 7, 2016 judgment entry in which it dismissed Relator’s December 8, 2015 motion.

{¶4} Since the trial court has ruled on his motion, Relator’s 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.

{¶5} No costs assessed.

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Judge Gene Donofrio

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Judge Cheryl L. Waite

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Judge Carol Ann Robb