

[Cite as *State ex rel. Kozic v. Sweeney*, 2016-Ohio-5703.]

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

STATE EX REL. ZOLTAN KOZIC,	)	
	)	
RELATOR,	)	
	)	CASE NO. 16 MA 0109
V.	)	
	)	OPINION
HONORABLE MAUREEN SWEENEY,	)	AND
	)	JUDGMENT ENTRY
RESPONDENT.	)	

CHARACTER OF PROCEEDINGS: Petition for Writ of Mandamus

JUDGMENT: Dismissed

APPEARANCES:

For Relator

Zoltan Kozic, Pro-se  
Lake Erie Correctional Institution  
501 Thompson Road  
P.O. Box 8000  
Conneaut, Ohio 44030

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. Mary DeGenaro  
Hon. Carol Ann Robb

Dated: September 2, 2016

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PER CURIAM.

{¶1} Relator Zoltan Kozic has filed a pro se petition for a writ of mandamus asking this Court to compel Respondent Judge Maureen A. Sweeney of the Mahoning County Common Pleas Court, to rule on his January 11, 2016 postconviction relief petition. Counsel for Respondent has filed a motion to dismiss indicating that Respondent has already ruled upon the petition.

{¶2} A writ of mandamus is an extraordinary remedy which should be exercised by this court with caution and issued only when the right is clear. *State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 142 Ohio St. 3d 370, 2014-Ohio-4022, 31 N.E.3d 596, ¶ 11. Entitlement to a writ of mandamus requires the relator to demonstrate: (1) they have a clear legal right to the relief, (2) the respondent has a clear legal duty to provide that relief, and (3) they have no adequate remedy at law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12.

{¶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 August 10, 2016. Respondent has attached as an exhibit to the motion to dismiss a copy of the trial court's August 10, 2016 judgment entry in which it dismissed Relator's January 11, 2016 petition.

{¶4} Since the trial court has ruled on the petition, Relator's petition for a writ of mandamus 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 mandamus is hereby dismissed as moot.

{¶15} No costs assessed.

Donofrio, P.J. concurs.

DeGenaro, J. concurs.

Robb, J. concurs.