

[Cite as *State ex rel. McJunkins v. McCormick*, 2003-Ohio-5258.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 83443

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
JAMES MCJUNKINS	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
JUDGE TIMOTHY MCCORMICK	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION:

CHARACTER OF PROCEEDINGS: WRIT OF PRECEDENDO

JUDGMENT: Writ Granted.
Motion Nos. 352365 and 352406.

APPEARANCES:

For Relator: JAMES MCJUNKINS, PRO SE
Inmate No. 340-381
Lebanon Correctional Inst.
P.O. Box 56
Lebanon, Ohio 45036

For Respondent: WILLIAM D. MASON, ESQ.
Cuyahoga County Prosecutor
BY: GAIL DENISE BAKER, ESQ.
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J:

{¶1} On September 10, 2003, relator James McJunkins commenced this

procedendo action against the respondent, Judge Timothy McCormick, to compel the judge to rule on his motion to withdraw guilty plea in *State v. McJunkins*, Cuyahoga County Court of Common Pleas Case No. CR-346869, which was filed November 7, 2002. On September 12, 2003, the respondent, through the Cuyahoga County Prosecutor, filed a motion for summary judgment. For the following reasons, we deny the respondent's motion for summary judgment and grant the writ for procedendo.

{¶2} A petition for 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. Miley v. Parrot* (1996), 77 Ohio St.3d 64, 671 N.E.2d 24. "An inferior court's refusal to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy." *State ex rel. Dehler v. Sutula* (1995), 74 Ohio St.3d 33, 656 N.E.2d 332 quoting *State ex rel. Levin v. Sheffield Lake* (1994), 70 Ohio St.3d 104, 637 N.E.2d 319.

{¶3} In the motion for summary judgment, respondent argues that relator's request is moot. Attached to the motion for summary judgment is a journal entry filed on November 1, 2001, from *State v. McJunkins*, supra, that denied the motion to withdraw guilty plea. However, the judgment entry attached to the motion for summary judgment does not pertain to the relator's motion to withdraw guilty plea filed on November 7, 2002. Rather, it pertains to a motion to withdraw guilty plea relator filed on September 12, 2001.

{¶4} A review of the record, including a review of the docket, indicates that Judge McCormick has not yet ruled on McJunkins motion to withdraw guilty plea as filed on November 7, 2002. Because this motion has been pending for almost eleven months, we hold that McJunkins' request for relief in procedendo is well taken.

{¶5} The respondent is hereby directed to rule on the pending motion to withdraw guilty plea within thirty (30) days from the date of this entry. Respondent to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ granted.

FRANK D. CELEBREZZE, JR.
JUDGE

KENNETH A. ROCCO, A. J., CONCURS

ANNE L. KILBANE, J., CONCURS