

[Cite as *State v. Jones*, 2005-Ohio-115.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 85240

STATE OF OHIO, EX REL., : ORIGINAL ACTION
JOSHUA MADSEN :

Relator : JOURNAL ENTRY
AND
OPINION

vs. :

HON. PEGGY FOLEY JONES :

Respondent :

DATE OF JOURNALIZATION: JANUARY 12, 2005

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Dismissed.
Motion No. 363915 and 367148
Order No. 367083

APPEARANCES:

For Relator: JOSHUA MADSEN, pro se
Inmate No. 441-488
Mansfield Correctional Inst.
P.O. Box 788
Mansfield, Ohio 44901-0788

For Respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: JON W. OEBKER
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

Anthony O. Calabrese, Jr., J.:

{¶ 1} Relator, Joshua Madsen, requests that this court compel respondent judge to hold a hearing with respect to the petition for postconviction relief filed by relator in *State v. Madsen*, Cuyahoga County Court of Common Pleas Case No. CR-427735 on September 5, 2003.

"Mandamus does not lie to compel a judge to hold a hearing on a petition for postconviction relief. *State ex rel. Jackson v. McMonagle*, 67 Ohio St.3d 450, 1993-Ohio-143, 619 N.E.2d 1017. As a consequence, we will treat this action as a request by [relator] to compel the court of common pleas to issue findings of fact and conclusions of law with respect to the petition for postconviction relief."

{¶ 2} *Moore v. State*, Cuyahoga App. No. 82516, 2003-Ohio-3681 at ¶1. Likewise, in this action, we will treat Madsen's complaint as a request to compel the filing of findings of fact and conclusions of law.

{¶ 3} A review of the docket in Case No. CR-427735 reflects that respondent issued findings of fact and conclusions of law which were received for filing by the clerk on October 19, 2004. Additionally, Madsen has appealed the judgment of the court of common pleas in *State v. Madsen*, Case 85439. As a consequence, we dismiss this action sua sponte as moot.

{¶ 4} Accordingly, relator's complaint is dismissed sua sponte. 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 dismissed.

ANTHONY O. CALABRESE, JR.
JUDGE

JAMES J. SWEENEY, P.J., CONCURS

MARY EILEEN KILBANE, J., CONCURS