

[Cite as *State ex rel. Burton v. Gallagher*, 2005-Ohio-2438.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 86210

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
WILLIAM BURTON	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
JUDGE EILEEN GALLAGHER	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: MAY 18, 2005

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Writ Denied.
Motion No. 370641
Order No. 371609

APPEARANCES:

For Relator:	WILLIAM BURTON, pro se
	Inmate No. 399-051
	1001 Olivesburg Road
	Mansfield, Ohio 44901-8107

For Respondent:	WILLIAM D. MASON
	Cuyahoga County Prosecutor
	BY: AMY VENESILE
	Assistant County Prosecutor
	Justice Center - 9 th Floor

1200 Ontario Street
Cleveland, Ohio 44113

JUDGE ANN DYKE:

{¶ 1} On April 6, 2005, the relator, William Burton, commenced this mandamus action against the respondent, Judge Eileen A. Gallagher, to compel her to rule on his motion for jail time credit, filed on June 28, 2004, in the underlying case, *State v. Burton*, Cuyahoga County Common Pleas Court Case No. CR-390278. On April 12, 2005, the respondent moved for summary judgment on the grounds of mootness. Attached to the dispositive motion was a copy of a March 22, 2005 journal entry confirming that he had been granted 275 days credit in the underlying case. This establishes that the relator has received his requested relief and that the action is, therefore, moot. *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 589 N.E.2d 113.

{¶ 2} Burton, on May 2, 2005, filed a brief in opposition arguing that the judge's summary judgment motion should be denied because he never received notice of the March 22, 2005 entry. However, this argument is unpersuasive. This court's review of the docket shows the entry, and the failure to receive the entry does not negate its existence and effect.

{¶ 3} Accordingly, the court grants the respondent's motion for

summary judgment and denies the application for a writ of mandamus.

Costs assessed against relator. 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).

ANN DYKE
PRESIDING JUDGE

JAMES J. SWEENEY, J., CONCURS

CHRISTINE T. MCMONAGLE, J., CONCURS