

[Cite as *State ex rel. Brown v. Friedland*, 2005-Ohio-4289.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 86493

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
LEWIS BROWN	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
HONORABLE CAROLYN FRIEDLAND	:	
	:	
Respondent	:	

DATE OF JOURNALIZATION: AUGUST 15, 2005

CHARACTER OF PROCEEDINGS: WRIT OF MANDAMUS

JUDGMENT: Complaint Dismissed.  
Motion No. 373115  
Order No. 374353

APPEARANCES:

For Relator: LEWIS BROWN, pro se  
Inmate No. 460-293  
Mansfield Corr. Inst.  
P. O. Box 788  
Mansfield, Ohio 44901

For Respondent: WILLIAM D. MASON  
Cuyahoga County Prosecutor  
BY: AMY VENESILE  
Assistant County Prosecutor  
Justice Center - 9<sup>th</sup> Floor  
1200 Ontario Street

Cleveland, Ohio 44113

JUDGE KENNETH A. ROCCO:

{¶ 1} Relator, Lewis Brown, requests that this court compel respondent judge to issue findings of fact and conclusions of law with respect to the petition for postconviction relief filed by relator in *State v. Brown*, Cuyahoga County Court of Common Pleas Case No. CR-430692.

{¶ 2} Respondent has filed a motion to dismiss. Relator has not opposed the motion. Respondent argues that she does not have a clear legal duty to issue findings of fact and conclusions of law. We agree.

{¶ 3} R.C. 2953.21(A)(2) provides, in pertinent part:

Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1) of this section shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication \*\*\*.

The transcript in the direct appeal from Case No. CR-430692, *State v. Brown*, Cuyahoga App. No. 84059, 2004-Ohio-6862, was filed on March 23, 2004. The petition for postconviction relief was filed on September 23, 2004. The petition was due on or before Monday, September 20, 2004. Brown has not demonstrated that any exception to the one-hundred-eighty-day requirement applies.

{¶ 4} Because the petition was untimely, respondent did not have a clear legal duty to issue findings of fact and conclusions of law. *State ex rel. Kimbrough v. Greene*, Cuyahoga App. No. 81172, 2002-Ohio-2750, affirmed by 98 Ohio St.3d 116, 2002-Ohio-7042, 781 N.E.2d 155; *State ex rel. Jackson v. Court of Common Pleas* (Aug. 31, 2000), Cuyahoga App. No. 77999. As a consequence, denial of relief in mandamus is appropriate.

{¶ 5} Accordingly, respondent's motion to dismiss is granted. Relator 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).

Complaint dismissed.

KENNETH A. ROCCO  
JUDGE

JAMES J. SWEENEY, P.J., CONCURS

CHRISTINE T. MCMONAGLE, J., CONCURS