

[Cite as *State ex rel. Martin v. Mannen*, 2006-Ohio-3832.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 88101

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| STATE OF OHIO, EX REL., | : | ORIGINAL ACTION |
| TRAMAIN E. MARTIN | : | |
| | : | JOURNAL ENTRY |
| Relator | : | AND |
| | : | OPINION |
| vs. | : | |
| | : | |
| HON. JUDGE ANN T. MANNEN | : | |
| | : | |
| Respondent | : | |

DATE OF JOURNALIZATION: JULY 26, 2006

CHARACTER OF PROCEEDINGS: WRIT OF PROCEDENDO

JUDGMENT: Writ Granted.

APPEARANCES:

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| For Relator: | TRAMAIN E. MARTIN pro se |
| | Inmate No. 494-327 |
| | Belmont Correctional Inst. |
| | P.O. Box 540 |
| | St. Clairsville, Ohio 43950 |

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

JUDGE PATRICIA A. BLACKMON:

{¶ 1} Tramaine E. Martin has filed a complaint for a writ of procedendo. Martin seeks to compel Judge Ann T. Mannen to issue a ruling with regard to a motion for postconviction relief, which was filed in the underlying action of *State v. Martin*, Cuyahoga County Court of Common Pleas Case No. CR-468883. For the following reason, we issue a writ of procedendo on behalf of Martin.

{¶ 2} In order for this court to issue a writ of procedendo, Martin must demonstrate that he possesses a clear legal right to the relief requested and that there exists no adequate remedy in the ordinary course of the law. *State ex rel. Brown v. Shoemaker* (1988), 38 Ohio St.3d 344, 528 N.E.2d 188. Martin must also demonstrate that Judge Mannen possesses a clear legal duty, which requires her to proceed to judgment. *State ex rel. Cochran v. Quillin* (1969), 20 Ohio St.2d 6, 251 N.E.2d 607. Finally, a writ of procedendo is appropriate when a court has refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Doe v. Tracy* (1988), 51 Ohio App.3d 198, 555 N.E.2d 674.

{¶ 3} In the case sub judice, Martin timely filed a petition for postconviction relief on December 27, 2005. As of the date of this entry, Judge Mannen has not issued a ruling with regard to the pending petition for postconviction relief. Sup.R. 40(A) provides that motions shall be ruled upon within 120 days from the date of filing. A period of more than 120 days has elapsed since Martin filed his petition for postconviction relief, and thus an inordinate period of

period of time has elapsed which warrants procedendo to compel a ruling. *State ex rel. Mayes v. Ambrose*, Cuyahoga App. No. 88259, 2006-Ohio-3322.

{¶ 4} Accordingly we issue a writ of procedendo on behalf of Martin and order Judge Mannen to immediately issue a ruling, pursuant to R.C. 2953.21(E) and (G), with regard to the petition for postconviction relief which remains pending in the underlying action of *State v. Martin*, supra. Costs to Judge Mannen. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Writ granted.

PATRICIA A. BLACKMON
JUDGE

DIANE KARPINSKI, P.J., CONCURS

KENNETH A. ROCCO, J., CONCURS