

[Cite as *State ex rel. Hunter v. Hastings*, 2006-Ohio-806.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 87455

| | | |
|---------------------------|---|-----------------|
| STATE OF OHIO, EX REL., | : | ORIGINAL ACTION |
| CHARLES HUNTER | : | |
| | : | JOURNAL ENTRY |
| Relator | : | AND |
| | : | OPINION |
| vs. | : | |
| | : | |
| JUDGE JEFFREY P. HASTINGS | : | |
| | : | |
| Respondent | : | |

DATE OF JOURNALIZATION: FEBRUARY 17, 2006

CHARACTER OF PROCEEDINGS: WRIT OF PROCEDENDO

JUDGMENT: Writ Granted.
Motion No. 379482

APPEARANCES:

For Relator: CHARLES HUNTER, pro se
Inmate No. 472-323
Richland Correctional Inst.
P.O. Box 8107
Mansfield, Ohio 44901

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

JUDGE CHRISTINE T. MCMONAGLE:

{¶ 1} Charles Hunter has filed a complaint for a writ of procedendo. Hunter seeks an order from this court which requires Judge Jeffrey P. Hastings to issue a ruling with regard to a motion for jail time credit which was simultaneously filed in *State v. Hunter*, Cuyahoga County Court of Common Pleas Case Nos. CR-430405 and CR-444435.¹

{¶ 2} Judge Hastings has filed a motion for summary judgment. For the following reasons, we deny the motion for summary judgment and grant a writ of procedendo on behalf of Hunter.

{¶ 3} In the case sub judice, Hunter filed a motion for jail time credit on April 21, 2005. As of the date of this entry, Judge Hastings has not issued any ruling with regard to the pending motion for jail time credit. A lapse of more than nine months, since the filing of the pending motion, constitutes an unreasonable delay which requires that this court issue a writ of procedendo on behalf of Hunter. See *State ex rel. Bunting v. Hass*, 102 Ohio St.3d 161, 2004-Ohio-2055, 807 N.E.2d 359; *State ex rel. Levin v. Sheffield Lake* (1994), 70 Ohio St.3d 104, 1994-Ohio-385, 637 N.E.2d 319; *State ex rel. Turpin v. Stark Cty. Court of Common Pleas* (1966), 8 Ohio St.2d 1, 220 N.E.2d 670. It must also be noted that a trial court possesses a clear legal duty to calculate and state in a journal entry the number of days a defendant was incarcerated

¹Judge Hastings was substituted for Judge Pokorny, as respondent, pursuant to Civ.R. 25(D)(1). See Motion No. 380137 as issued on Jan. 26, 2006.

prior to conviction and sentence. *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 589 N.E.2d 113; *State ex rel. Johnson v. Judge O'Donnell* (Oct. 4, 1994), Cuyahoga App. No. 67783; *State ex rel. Andrews v. Judge Corrigan* (Oct. 11, 1991), Cuyahoga App. No. 62253. See, also, R.C. 2949.12; R.C. 2949.08. Any error associated with the calculation of jail time credit, however, must be addressed through a direct appeal. *State ex rel. Britton v. Judge Foley-Jones* (Mar. 5, 1998), Cuyahoga App. No. 73646; *State ex rel. Spates v. Judge Sweeney* (Apr. 17, 1997), Cuyahoga App. No. 71986.

{¶ 4} Accordingly, we deny the motion for summary judgment and issue a writ of procedendo on behalf of Hunter. Judge Hastings is ordered to immediately issue a ruling with regard to the motion for jail time credit that was filed by Hunter in Cuyahoga County Court of Common Pleas Case Nos. CR-430405 and CR-444435 and to serve a copy of the judgment upon Hunter. Costs to Judge Hastings. It is further ordered that the Clerk for the Eighth District Court of Appeals serve notice of this judgment upon all parties as mandated by Civ.R. 58(B).

Writ granted.

CHRISTINE T. MCMONAGLE
JUDGE

ANN DYKE, A.J., CONCURS

MICHAEL J. CORRIGAN, J., CONCURS