

[Cite as *Walker v. Russo*, 2007-Ohio-2912.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89769

ERIC WALKER

RELATOR

VS.

NANCY RUSSO, JUDGE

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

WRIT OF MANDAMUS
MOTION NO. 396417
ORDER NO. 397176

RELEASE DATE: June 12, 2007

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FOR RELATOR:

Eric Walker, pro se
Inmate No. 491-091
Southern Ohio Correctional Facility
P.O. Box 45699
Lucasville, Ohio 45699

ATTORNEY FOR RESPONDENT:

WILLIAM D. MASON
Cuyahoga County Prosecutor
By: T. Allan Regas
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
JUDGE JAMES J. SWEENEY:

{¶ 1} Relator, Eric Walker, is the defendant in *State v. Walker*, Cuyahoga County Court of Common Pleas Case No. CR-455849, and remains incarcerated. Respondent judge of the court of common pleas is assigned to Case No. CR-455849.

{¶ 2} Walker appealed his conviction and sentence and this court affirmed the judgment of conviction but vacated Walker's sentence and remanded the case to the court of common pleas for further proceedings. *State v. Walker*, Cuyahoga App. No. 87677, 2006-Ohio-6188.

{¶ 3} Walker requests that this court issue a writ of mandamus compelling respondent judge to issue an order requiring that Walker be returned to Cuyahoga

County for resentencing. Respondent has, however, filed a motion to dismiss, attached to which is a copy of a journal entry received for filing on March 16, 2007 in Case No. CR-455849 in which respondent resentenced Walker. Walker has not filed a response to the motion to dismiss. Respondent argues that this action is moot. We agree.

{¶ 4} We note that dismissal is appropriate in this case despite the fact that the motion to dismiss presents matters outside the pleading. Civ.R. 12(B) and 56. A court may take judicial notice of mootness. “In fact, ‘an event that causes a case to be moot may be proved by extrinsic evidence outside the record.’ *Pewitt v. Lorain Correctional Inst.* (1992), 64 Ohio St.3d 470, 472, 597 N.E.2d 92,94.” *State ex rel. Nelson v. Russo* (2000), 89 Ohio St.3d 227, 228, 2000-Ohio-141, 729 N.E.2d 1181. As a consequence, we take judicial notice of the mootness of this action in light of the fact that respondent issued a journal entry resentencing Walker.

{¶ 5} We also note that the complaint has several defects. The action is not on relation of the state as required by R.C. 2731.04. Walker has not included his address in the caption as required by Civ.R. 10(A). Also, despite Walker’s averment to the contrary, he has failed to include a certified copy of the prison cashier’s statement of the balance in his inmate account as required by R.C. 2969.25(C).

{¶ 6} 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.

JAMES J. SWEENEY, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
PATRICIA A. BLACKMON, J., CONCUR