

[Cite as *State ex rel. Mills v. McGinty*, 2007-Ohio-710.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 89145

**STATE OF OHIO EX REL.,
DAMON MILLS**

RELATOR

VS.

HONORABLE TIMOTHY J. McGINTY

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF PROCEDENDO
MOTION NO. 392054
ORDER NO. 393511

RELEASE DATE: February 16, 2007

ATTORNEY FOR RELATOR:

Damon R. Mills
Inmate No. 357-651
Mansfield Correctional Inst.
P.O. Box 788
Mansfield, Ohio 44901

ATTORNEY FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor
BY: Thorin Freeman
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
JUDGE SEAN C. GALLAGHER:

{¶ 1} On December 13, 2006, the relator, Damon Mills, commenced this procedendo action against the respondent, Judge Timothy McGinty, to compel the judge to rule on a motion to vacate illegal sentence which Mills filed on August 28, 2006, in the underlying case, *State v. Damon Mills*, Cuyahoga County Common Pleas Court Case No. CR-360131. On January 2, 2007, the respondent judge, through the Cuyahoga County Prosecutor, moved for summary judgment on the grounds of mootness. Attached to this dispositive motion was a certified copy of a December 29, 2006 journal entry denying the motion to vacate illegal sentence in the underlying case. Mills never filed a response.

{¶ 2} The attached journal entry establishes that the respondent judge has performed his duty to rule on the subject motion and that Mills has received his requested relief. Therefore, this procedendo action is moot.

{¶ 3} Accordingly, this court grants the respondent judge's motion for summary judgment and denies the application for a writ of procedendo. 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).

SEAN C. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
ANTHONY O. CALABRESE, JR., CONCUR