

[Cite as *State ex rel. Smith v. Callahan*, 2008-Ohio-5977.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92209**

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**STATE OF OHIO, EX REL.,  
MICHAEL SMITH**

RELATOR

VS.

**JUDGE KENNETH CALLAHAN**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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WRIT OF MANDAMUS  
MOTION NO. 414867  
ORDER NO. 415371

**RELEASE DATE:** November 19, 2008

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**FOR RELATOR:**

Michael Smith, pro se  
Inmate No. 493-636  
Mansfield Correctional Inst.  
P.O. Box 788  
Mansfield, Ohio 44901-0788

**ATTORNEYS FOR RESPONDENT:**

William D. Mason  
Cuyahoga County Prosecutor

By: Diane Smilanick  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

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MARY EILEEN KILBANE, J.:

{¶ 1} On October 2, 2008, the relator, Michael Smith, commenced this mandamus action against the respondent, Judge Kenneth Callahan, to compel the judge to issue findings of fact and conclusions of law for a postconviction relief petition, which Smith filed on May 18, 2006, in the underlying case, *State v. Michael Smith*, Cuyahoga County Common Pleas Court Case No. CR-467634. On October 29, 2008, the respondent, through the Cuyahoga County Prosecutor, moved for summary judgment on the grounds of mootness. Attached to this dispositive motion was a copy of the findings of fact and conclusions of law, file-stamped October 24, 2008, for the subject postconviction relief petition. Smith filed a response on November 10, 2008. For the following reasons, this court grants the motion for summary judgment and denies the writ.

{¶ 2} A review of the docket and the underlying case reveals that the respondent denied the postconviction relief petition originally on November 17, 2006, without findings of fact and conclusions of law. Smith appealed that denial in *State v. Smith* (Jan. 12, 2007), Cuyahoga App. No. 89154, but this court dismissed the appeal for lack of a final, appealable order because the judge had not issued findings of fact and conclusions of law.

{¶ 3} Now, however, the judge has fulfilled his duty to issue the findings of fact and conclusions of law, and Smith has received his requested relief, a resolution of his postconviction relief petition. Although Smith argues that mandamus should issue because the judge was so tardy in issuing the findings of fact and conclusions of law, the matter is still moot, because those have been issued and there is no further relief to grant.

{¶ 4} Additionally, Smith failed to support his complaint for mandamus with an affidavit specifying the details of the claims as required by Loc. R.45(B)(1)(A). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077, and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899. He has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the relator within the previous five years in any state or federal court. The relator's failure to comply with R.C. 2969.25 warrants dismissal of the writ complaint. *State ex rel. Zanders v. Ohio Parole Board* (1998), 82 Ohio St.3d 421, 696 N.E.2d 594 and *State ex rel. Alford v. Winters* (1997), 80 Ohio St.3d 285, 685 N.E.2d 1242.

{¶ 5} Accordingly, this writ action is denied. 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).

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MARY EILEEN KILBANE, JUDGE

COLLEEN CONWAY COONEY, P.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR