

[Cite as *State ex rel. Sevayega v. McMonagle*, 2008-Ohio-6275.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92157

**STATE OF OHIO, EX REL.,
REGINALD D. SEVAYEGA**

RELATOR

vs.

THE HONORABLE RICHARD J. MCMONAGLE

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

WRIT OF PROCEDENDO
MOTION NO. 415255
ORDER NO. 415423

RELEASE DATE: December 1, 2008

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FOR RELATOR:

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ATTORNEYS FOR RESPONDENT:

William D. Mason
Cuyahoga County Prosecutor

By: Pamela Bolton
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Cleveland, Ohio 44113

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Judge Anthony O. Calabrese:

{¶ 1} On October 3, 2008, relator Reginald D. Sevayega commenced this procedendo action against Judge Richard J. McMonagle to compel him to rule on his petition for post-conviction relief in *State v. Sevayega*, Cuyahoga County Court of Common Pleas Case No. CR-92-290548, which was filed on March 3, 2008. On November 12, 2008, Judge McMonagle, through the Cuyahoga County Prosecutor's Office, filed a motion to dismiss Sevayega's action in procedendo. For the following reason, we grant the motion to dismiss.

{¶ 2} Attached to the motion to dismiss is a copy of a journal entry which indicates that on November 5, 2008, Judge McMonagle denied Sevayega's petition for post-conviction relief thereby rendering the petition for a writ of procedendo moot. *State ex rel. Grant v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163; *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 278, 658 N.E.2d 723.

{¶ 3} Accordingly, we dismiss Sevayega's petition for a writ of procedendo.¹ Respondent to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ dismissed.

ANTHONY O. CALABRESE, JR.,
PRESIDING JUDGE

¹ Dismissal is appropriate despite the fact that the motion to dismiss presents matters outside of the pleading. Civ.R. 12(B) and 56. A court may take judicial notice of mootness. See *State ex rel. McCuller v. Corrigan*, Cuyahoga App.No. 89582, 2007-Ohio-1975.

KENNETH A. ROCCO, J., and
ANN DYKE, J., CONCUR