

[Cite as *State ex rel. Foster v. Cuyahoga Cty. Court of Common Pleas*, 2008-Ohio-6645.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 91965**

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

RELATOR

VS.

**CUYAHOGA COUNTY COURT OF  
COMMON PLEAS**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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WRIT OF MANDAMUS  
MOTION NO. 414460  
ORDER NO. 416190

**RELEASE DATE:** December 16, 2008

**FOR RELATOR:**

Michael Foster, pro se  
Inmate No. 423-695  
P.O. Box 57/m-blk  
Marion, Ohio 43301

**ATTORNEYS FOR RESPONDENT:**

William D. Mason  
Cuyahoga County Prosecutor

By: Matthew E. Meyer  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

JAMES J. SWEENEY, A.J.:

{¶ 1} Relator, Michael Foster, is the defendant in *State v. Foster*, Cuyahoga County Court of Common Pleas Case No. CR-426781. Foster avers that, on November 8, 2007, the United States District Court granted him a conditional writ of habeas corpus requiring that respondent permit Foster to enter a new plea or to commence trial. He complains that respondent court has failed to timely commence the trial in his case. He requests that this court compel respondent to dismiss Case No. CR-426781.

{¶ 2} Respondent has filed a motion for summary judgment and argues that Foster does not have a clear legal right to relief and that appeal is an adequate remedy at law. The motion for summary judgment is unopposed. We find

respondent's arguments to be well-taken and grant summary judgment in favor of respondent.

{¶ 3} Respondent argues, inter alia, that the docket in Case No. CR-426781 reflects that Foster has requested various continuances. In support of this argument, respondent quotes the opinion of the federal district court in *Foster v. Money* (Sept. 4, 2008), N.D.Ohio No. 1:05 CV 1009, 2008 WL 4148594, which Judge Dan Aaron Polster issued in Foster's federal habeas corpus action. Judge Polster recites in detail the procedural history of Case No. CR-426781 after his granting of the conditional writ of habeas corpus. He specifically refers to various requests for continuance of the trial date or a pretrial date by the defense and concludes that the delays are not due to action by the state. Additionally, our review of the docket in Case No. CR-426781 reflects that, since the September 4, 2008 release of Judge Polster's opinion, the defense has requested three continuances.

{¶ 4} In light of the circumstances, we agree with respondent that Foster has not demonstrated a clear legal right to relief. Similarly, appeal is an adequate remedy at law by which he may raise the issue of whether his right to a speedy trial has been violated. See, e.g., *State ex rel. Stadmire v. Common Pleas Court*, Cuyahoga App. No. 87858, 2006-Ohio-1834, at ¶4.

{¶ 5} Accordingly, respondent's motion for summary judgment is granted. 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). Relator to pay costs.

Writ denied.

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JAMES J. SWEENEY  
ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR