

[Cite as *State ex rel. Montgomery v. Synenberg*, 2009-Ohio-1099.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92489

**STATE OF OHIO, EX REL.,
DANIEL MONTGOMERY**

RELATOR

VS.

JOAN SYNENBERG, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF PROCEDENDO
MOTION NO. 417301
ORDER NO. 418370

RELEASE DATE: March 9, 2009

FOR RELATOR:

Daniel Montgomery #453-729, pro se
North Central Correctional Inst.
670 Marion Williamsport Road, E.
P.O. Box 1812
Marion, Ohio 43301-1812

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

KENNETH A. ROCCO, J.:

{¶ 1} On December 2, 2008, the relator, Daniel Montgomery, commenced this procedendo action against the respondent, Judge Joan Synenberg, to compel the judge to rule on a postconviction relief petition, which Montgomery filed on November 6, 2006, in the underlying case, *State of Ohio v. Daniel Montgomery*, Cuyahoga County Common Pleas Court Case No. CR-433325. On January 12, 2009, the respondent, through the Cuyahoga County Prosecutor, moved for summary judgment on the grounds of mootness. Montgomery never filed a response. Attached to the dispositive motion was a journal entry, which the docket reveals was journalized on January 8, 2009, and which denied the postconviction

petition in the underlying case because the petition was untimely and meritless. Thus, the judge has fulfilled her duty to resolve the petition with findings of fact and conclusions of law. *State ex rel. Carrion v. Harris* (1988), 40 Ohio St.3d 19, 530 N.E.2d 1330. Furthermore, Montgomery has received his requested relief, a resolution of his postconviction petition.

{¶ 2} Additionally, Montgomery failed to support his complaint for procedendo with an affidavit specifying the details of the claims as required by Local Rule 45(B)(1)(A). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077, unreported and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899, unreported.

{¶ 3} Accordingly, this court grants the 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).

KENNETH A. ROCCO, JUDGE

JAMES J. SWEENEY, P.J., and
PATRICIA A. BLACKMON, J., CONCUR