

[Cite as *State ex rel. Shie v. McMonagle*, 2009-Ohio-3742.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93001

**STATE OF OHIO, EX REL.,
DAVID ZION SHIE**

RELATOR

VS.

JUDGE TIMOTHY MCMONAGLE

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

WRIT OF PROCEDENDO
MOTION NO. 420599
ORDER NO. 423721

RELEASE DATE: July 27, 2009

FOR RELATOR

David Zion Shie, pro se
Inmate No. 483-604
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ATTORNEYS FOR RESPONDENT

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Cuyahoga County Prosecutor

BY: James E. Moss
Assistant County Prosecutor
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LARRY A. JONES, J.:

{¶ 1} On March 18, 2009, the petitioner, David Zion Shie, commenced this procedendo action against the respondent, Judge Timothy McMonagle, to compel the judge to rule on his "Petition to challenge application of O.R.C. 2950.032," the Adam Walsh Act, in the underlying case, *David Zion Shie v. State of Ohio*, Cuyahoga County Common Pleas Court Case No. CV-649863. On April 7, 2009, the respondent judge moved to dismiss on the grounds that he had stayed the matter until the higher courts clarify the status of the Adam Walsh Act. On April 16,

2009, Shie filed a brief in opposition. For the following reasons, this court grants the motion to dismiss.

{¶ 2} In *State of Ohio v. David Zion Shie*, Cuyahoga County Common Pleas Court Case No. CR-458959, in May 2005, Shie pleaded guilty to four counts of sexual battery and agreed as part of the plea to sexual predator status. The court sentenced him to four consecutive four-year sentences for a total of sixteen years.

{¶ 3} On February 5, 2008, Shie commenced the underlying action to contest the application of the Adam Walsh Act to him. He asserts that it should be inapplicable to him because it violates the plea agreement in which he stipulated to sexual predator status. The State never filed an answer, and Shie moved for default judgment on September 24, 2008. When the respondent had still not ruled on the petition, Shie commenced this procedendo action. Then on March 30, 2009, the respondent issued a journal entry staying all cases, including the underlying case, which challenged the Adam Walsh Act, pending final resolution by the Eighth District Court of Appeals or the Supreme Court of Ohio on the constitutionality of the statute.

{¶ 4} In response Shie argues that the resolution of the constitutional issues will not impact his case, which is based on a violation of the plea agreement. He also hoped to consolidate, if necessary, an appeal of Judge McMonagle’s decision with an appeal from his criminal case, in which the trial court ruled that a “motion to enforce plea contract or motion to withdraw guilty plea” is not the proper remedy to

raise the breach issue. *State of Ohio v. David Zion Shie*, Cuyahoga County Court of Appeals Case No. 92819.

{¶ 5} The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. *Yee v. Erie County Sheriff's Department* (1990), 51 Ohio St.3d 43, 553 N.E.2d 1354. Procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Watkins v. Eighth District Court of Appeals*, 82 Ohio St.3d 532, 1998-Ohio-190, 696 N.E.2d 1079. However, the writ will not issue to control what the judgment should be, nor will it issue for the purpose of controlling or interfering with ordinary court procedure. Thus, procedendo will not lie to control the exercise of judicial discretion. Moreover, it will not issue when there is an adequate remedy at law. *State ex rel. Utley v. Abruzzo* (1985), 17 Ohio St.3d 202, 478 N.E.2d 789 and *State ex rel. Hansen v. Reed* (1992), 63 Ohio St.3d 597, 589 N.E.2d 1324.

{¶ 6} This court rules that in the present case, the respondent judge properly exercised his discretion to stay the case. The resolution of the constitutional issues could also resolve Shie's petition challenging the application of the Adam Walsh Act. If the supreme court holds that the statute cannot be applied retroactively or is otherwise constitutionally infirm, Shie's petition becomes moot. Additionally, the resolution of the constitutional questions could provide important insights into the resolution of the subject petition. Furthermore, the length of Shie's prison sentence

means that the matter is not pressing. Shie's desire to consolidate his issues on appeal was always only a hope and does not outweigh the exercise of the respondent's judicial discretion. Moreover, this court doubts that he will be prejudiced by the inability to consolidate. This ruling does not preclude Shie from raising the issue again, if and when the matter becomes ripe.

{¶ 7} Accordingly, the court grants the respondent's motion to dismiss and dismisses Shie's application for a writ of procedendo. Each side to bear their own costs. 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).

LARRY A. JONES, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
JAMES J. SWEENEY, J., CONCUR