

[Cite as *Smith v. Synenberg*, 2009-Ohio-3745.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93452

DARNELL R. SMITH

RELATOR

VS.

JUDGE JOAN SYNENBERG

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF PROCEDENDO
MOTION NO. 423795
ORDER NO. 424279

RELEASE DATE: July 29, 2009

FOR RELATOR

Darnell R. Smith, pro se
Inmate No. 463-783
Lake Erie Correctional Inst.
P.O. Box 8000
Conneaut, Ohio 44030

ATTORNEY FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

PATRICIA A. BLACKMON, P.J.:

{¶ 1} On June 12, 2009, relator Darnell Smith commenced this procedendo action against respondent Judge Joan Synenberg to compel her to rule on his motion for void judgment and conviction relief in *State v. Smith*, Cuyahoga County Court of Common Pleas, Case Nos. CR-443109, CR-437512 and CR-434529 which was filed on December 18, 2008. On July 2, 2009, Judge Synenberg, through the Cuyahoga County Prosecutor's office, filed a motion for summary judgment. For the following reasons, we grant the motion for summary judgment.

{¶ 2} Initially we find that the petition for a writ of procedendo is fatally defective since it is improperly captioned. A petition for a writ must be brought in the

name of the state, on relation of the person applying. Smith's failure to properly caption his petition constitutes sufficient reason for dismissal.¹

{¶ 3} Nevertheless, attached to the motion for summary judgment is a copy of Judge Synenberg's order denying Smith's motion. Thus, Smith's request for a writ of procedendo is moot.²

{¶ 4} Accordingly, we grant the motion for summary judgment. Costs to respondent. 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 denied.

PATRICIA A. BLACKMON, PRESIDING JUDGE

MARY J. BOYLE, J., and
LARRY A. JONES, J., CONCUR

¹ *Allen v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270; *Dunning v. Judge Cleary* (Jan. 11, 2001), Cuyahoga App. No. 78763.

² *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163; *State ex rel. Jerningham v. Cuyahoga County Court of Common Pleas* (1996), 74 Ohio St.3d 278, 658 N.E.2d 723.