

[Cite as *State ex rel. Huggins v. Friedman*, 2009-Ohio-5498.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93453**

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**STATE OF OHIO, EX REL.,  
AKEEM HUGGINS**

RELATOR

VS.

**JUDGE STUART FRIEDMAN**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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WRIT OF PROCEDENDO  
MOTION NO. 424721  
ORDER NO. 426608

**RELEASE DATE:**    October 13, 2009

**FOR RELATOR**

Akeem Huggins, pro se  
Inmate No. 502-755  
Trumbull Correctional Institution  
P.O. Box 901  
Leavittsburg, Ohio 44430-0901

**ATTORNEYS FOR RESPONDENT**

William D. Mason  
Cuyahoga County Prosecutor

BY: James E. Moss  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

ANN DYKE, J.:

{¶ 1} On June 12, 2009, the petitioner, Akeem Huggins, commenced this procedendo action against the respondent, Judge Stuart Friedman, to compel the judge to order a hearing and/or to rule on his pending motions for new trial and appointment of counsel in the underlying case, *State v. Huggins*, Cuyahoga County Common Pleas Court Case No. CR-466494. On July 29, 2009, the respondent judge, through the Cuyahoga County Prosecutor, moved for summary judgment on the grounds of mootness. Huggins never filed a response to this dispositive motion. For the following reasons, this court grants the judge's

motion for summary judgment and denies the application for a writ of procedendo.

{¶ 2} In the underlying case in 2006, a jury found Huggins guilty of two counts of involuntary manslaughter, two counts of aggravated robbery, and one count of obstructing justice; the judge also found him guilty of one count of perjury and sentenced him to a total of 15 years of incarceration. On appeal, *State v. Huggins*, Cuyahoga App. No. 88068, 2007-Ohio-1289, this court affirmed the convictions, but remanded for resentencing pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. The trial court resentenced Huggins to a total of 12 years.

{¶ 3} On July 30, 2007, Huggins filed a motion for new trial based on newly discovered evidence. On September 4, 2007, he filed a motion for appointment of counsel, and on July 21, 2008, he filed a motion for hearing and/or judgment. When the trial court did not rule on these motions, Huggins commenced this procedendo action.

{¶ 4} 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 Cty. Sheriff's Dept.* (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 Dist. 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.

{¶ 5} Attached to the judge's motion for summary judgment is a memorandum of opinion and order, file-stamped July 20, 2009, in which the respondent judge granted Huggins's motion for a hearing on the motion for a new trial, granted Huggins's motion for appointment of counsel, and set a hearing date of August 14, 2009, for the motion for a new trial. A review of the docket in the underlying case now shows that the parties have further briefed the issue and agreed to an October 28, 2009 hearing date for the new trial motion.

{¶ 6} This journal entry establishes that Huggins has received his requested relief, i.e., orders granting his motion for a hearing and appointment of counsel, and a hearing date for his motion for new trial. Furthermore, Huggins never filed a response to the motion for summary judgment. Thus, this procedendo action is moot.

{¶ 7} Accordingly, the court grants the respondent's motion for summary judgment and denies the writ. The parties are 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).

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ANN DYKE, JUDGE

COLLEEN CONWAY COONEY, A.J., and  
KENNETH A. ROCCO, J., CONCUR