

[Cite as *State ex rel. Brooks v. Saffold*, 2009-Ohio-5705.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93963

**STATE OF OHIO, EX REL.,
ULIOUS BROOKS**

RELATOR

VS.

JUDGE SHIRLEY SAFFOLD

RESPONDENT

**JUDGMENT:
WRIT DENIED**

WRIT OF PROCEDENDO
MOTION NO. 427206
ORDER NO. 427091

RELEASE DATE: October 23, 2009

FOR RELATOR

Ulious Brooks, pro se
Inmate No. 453-172
S.O.C.F.
P.O. Box 45699
Lucasville, Ohio 45699

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

CHRISTINE T. MCMONAGLE, J.:

{¶ 1} Ulious Brooks has filed a complaint for a writ of procedendo. Brooks seeks an order from this court that requires Judge Shirley Strickland Saffold to re-sentence him in conformity with the opinion of this court in *State v. Brooks*, Cuyahoga App. No. 83668, 2005-Ohio-3567. Specifically, Brooks seeks resentencing based upon our judgment, which vacated the fine of \$20,000 originally imposed by the trial court. For the following reasons, we grant Judge Saffold's motion for summary judgment, and decline to issue a writ of procedendo.

{¶ 2} Initially, we find that Brooks has failed to comply with R.C. 2969.25, which requires the attachment of an affidavit to the complaint for a writ of mandamus that describes each civil action or appeal filed within the previous five years in any state or federal court. Brooks's failure to comply with R.C. 2969.25 warrants the dismissal of the complaint for a writ of procedendo. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594; *Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. It must also be noted that Brooks has failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that his complaint for a writ of procedendo must be supported by an affidavit that specifies the details of the claim. *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 3} Finally, Brooks's request for a writ of procedendo is moot. The Supreme Court of Ohio, in *In re Ohio Criminal Sentencing Statutes Cases*, 109 Ohio St.3d 313, 2006-Ohio-2109, 847 N.E.2d 1174, reversed this court's judgment in *State v. Brooks*, *supra*, and remanded the matter directly to the trial court for resentencing. Upon remand, the trial court resentenced Brooks and did not impose any monetary fine, with the exception of court

costs. See sentencing journal entry as journalized on June 23, 2006, in Cuyahoga County Court of Common Pleas Case No. CR-435228. Brooks’s request for a writ of procedendo is moot. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723; *State ex rel. Snider v. Stapleton* (1992), 65 Ohio St.3d 40, 600 N.E.2d 240; *State ex rel. Richard v. Wells* (1992), 64 Ohio St.3d 76, 591 N.E.2d 1240; *State ex rel. Gantt v. Coleman* (1983), 6 Ohio St.3d 5, 450 N.E.2d 1163.

{¶ 4} Accordingly, we grant Judge Saffold’s motion for summary judgment. Costs to Brooks. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Writ denied.

CHRISTINE T. MCMONAGLE, JUDGE

COLLEEN CONWAY COONEY, A.J., and
MARY EILEEN KILBANE, J., CONCUR