

[Cite as *Henderson v. Saffold*, 2010-Ohio-2609.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94769

PAUL S. HENDERSON

PETITIONER

VS.

JUDGE SHIRLEY S. SAFFOLD

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Procedendo
Motion No. 432111
Order No. 434120

RELEASE DATE: June 8, 2010

FOR PETITIONER

Paul S. Henderson, pro se
Inmate No. 88969
Cuyahoga County Jail
P.O. Box 5600
Cleveland, Ohio 44101

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} On March 4, 2010, the petitioner, Paul S. Henderson, commenced this procedendo action against the respondent, Judge Shirley S. Saffold, to compel the judge to issue findings of fact and conclusions of law for her denial of Henderson's habeas corpus petition in the underlying case, *State v. Henderson*, Cuyahoga County Common Pleas Court Case No. CR-530899. On March 17, 2010, the respondent judge, through the Cuyahoga County Prosecutor, moved to dismiss. On May 27, 2010, Henderson filed a motion for summary judgment. For

the following reasons, this court grants the respondent's motion to dismiss and denies Henderson's motion for summary judgment.

{¶ 2} Henderson filed a habeas corpus petition in the underlying case on January 12, 2010, and the respondent judge summarily denied it on January 20, 2010. Henderson avers that he based his petition on the lapse of his speedy trial time. He brings this procedendo action to compel the respondent to issue findings of fact and conclusions of law so that he may appeal the denial of his petition.

{¶ 3} The writ of procedendo is 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.

{¶ 4} However, Henderson is not entitled to a writ of procedendo, because the judge had no duty to issue findings of fact and conclusions of law for the denial of the habeas petition. First, Henderson has not established that there must be findings and conclusions for a writ of habeas corpus. None of the cases he cites stand for that proposition. The statutory postconviction relief petition, discussed in *State v. Mapson*, (1982), 1 Ohio St.3d 217, 438 N.E.2d 910, is a different remedy from habeas corpus. Furthermore, the courts of Ohio have held

that a trial court is not required to issue findings of fact and conclusions of law when denying a habeas petition; there is no statutory duty to do so. *Kennelly v. Anderson* (Apr. 28, 1999), Lorain App. No. 97CA006934; *Dukes v. Rose* (Mar. 6, 1996), Lorain App. No. 95 CA006155; and *State ex rel. Scott v. Edwards* (Oct. 28, 1996), Ross App. No. 96CA2210. Thus, the respondent has already decided the matter.

{¶ 5} Petitioner also did not comply with R.C. 2969.25(C), which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. This also is sufficient reason to deny the writ, deny indigency status, and assess costs against the petitioner. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842 and *State ex rel. Hunter v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420.

{¶ 6} Accordingly, this court grants the respondent's motion to dismiss, denies Henderson's motion for summary judgment, and dismisses this application for a writ of procedendo. Petitioner to pay 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).

CHRISTINE T. McMONAGLE, JUDGE
MARY EILEEN KILBANE, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR

