

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95283

**STATE OF OHIO, EX REL.
SAMUEL NICHOLSON**

RELATOR

VS.

JUDITH KILBANE KOCH, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Procedendo
Motion No. 436442
Order No. 436678

RELEASE DATE: September 1, 2010

FOR RELATOR

Samuel Nicholson, pro se
Inmate Number: 543-348
Trumbull Correctional Inst.
P.O. Box 901
Leavittsburg, Ohio 44430

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

MARY EILEEN KILBANE, J.:

{¶ 1} Samuel Nicholson, the relator, has filed a complaint for a writ of procedendo. Nicholson seeks an order from this court which requires Judge Brendan J. Sheehan, the respondent, to issue findings of fact and conclusions of law with regard to a petition for post-conviction relief that was filed in *State v. Nicholson*, Cuyahoga County Court of Common Pleas Case No. CR-498671.¹ Judge Sheehan has filed a motion for summary judgment, which we grant for the following reasons.

{¶ 2} Initially, we find that Nicholson's complaint for a writ of procedendo is defective. Nicholson has failed to comply with R.C. 2969.25,

¹Sua sponte, Judge Brendan J. Sheehan is substituted for Judge Judith Kilbane Koch per Civ.R 25(D)(1).

which requires the attachment of an affidavit to the complaint for a writ of procedendo that describes each civil action or appeal filed within the previous five years in any state or federal court. Nicholson's failure to comply with R.C. 2969.25 requires the dismissal of his complaint for a writ of mandamus. *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.

{¶ 3} It must also be noted that Nicholson has failed to comply Loc.App.R. 45(B)(1)(a), which mandates that the complaint for a writ of mandamus be supported by a sworn affidavit that specifies the details of his claim. The failure of Nicholson to comply with the supporting affidavit requirement of Loc.App.R. 45(B)(1)(a) requires the dismissal of his complaint for a writ of mandamus. *State ex rel. Smith v. McMonagle* (Jul. 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 4} Finally, we find that Nicholson's complaint for a writ of procedendo is moot. Attached to Judge Sheehan's motion for summary judgment is a copy of a judgment entry, as journalized on August 2, 2010, which demonstrates a disposition of Nicholson's petition for post-conviction relief. The journal entry includes findings of fact and conclusions of law. *State ex rel. Konoff v. Shafer*, 80 Ohio St.3d 294, 1997-Ohio-119, 685 N.E.2d

1248; *Martin v. Judges of Lucas Cty. Court of Common Pleas* (1990), 50 Ohio St.3d 71, 552 N.E.2d 906.

{¶ 5} Accordingly, we grant Judge Sheehan's motion for summary judgment. Costs to Judge Sheehan. 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

MARY J. BOYLE, J., and
JAMES J. SWEENEY, J., CONCUR