

[Cite as *State ex rel. Cotton v. Russo*, 2010-Ohio-4365.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95163

**STATE OF OHIO, EX REL.
MILTON COTTON**

RELATOR

VS.

JUDGE JOHN RUSSO

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus/Procedendo
Motion No. 434841
Order No. 436996

RELEASE DATE: September 13, 2010

FOR RELATOR

Milton Cotton, pro se
Inmate No. A234-317
Grafton Correctional Institution
2500 S. Avon-Belden Road
Grafton, Ohio 44044

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

MELODY J. STEWART, J.:

{¶ 1} On May 26, 2010, the relator, Milton Cotton, commenced this mandamus or procedendo action against the respondent, Judge John Russo, to compel the judge to decide and issue findings of fact and conclusions of law for a “Motion to vacate void ab initio order” which Cotton filed on August 11, 2009, in the underlying case, *State of Ohio v. Milton Cotton*, Cuyahoga County Court of Common Pleas Case No. CR-281730. On June 15, 2010, the respondent judge, through the Cuyahoga County Prosecutor, filed a motion for summary judgment on the grounds of mootness. Attached to this dispositive motion was a certified

copy of a June 11, 2010 journal entry which states as follows: "Defendant's motion to vacate the void ab initio judgment entry of 8/14/1992, filed August 11, 2009, is denied. The Supreme Court of Ohio has determined that the sentencing journal entry in this case complies with Crim.R. 32(C). *State ex rel. Cotton v. Russo* (2010), __ Ohio St.3d __, 2010 WL 2011466. Defendant's motion for findings and conclusions filed October 7, 2009, is denied." Cotton never filed a response to the judge's dispositive motion.

{¶ 2} This journal entry establishes that the respondent judge has fulfilled his duty to rule on the outstanding motions, and that Cotton has received his requested relief, a ruling with findings and conclusions. *State ex rel. Carrion v. Harris* (1988), 40 Ohio St.3d 19, 530 N.E.2d 1330.

{¶ 3} Accordingly, this court grants the respondent judge's motion for summary judgment and denies Cotton's application for writs of mandamus or procedendo. Each side to bear its own costs. This court directs the Clerk of the Eighth District Court of Appeals to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

MELODY J. STEWART, JUDGE

SEAN C. GALLAGHER, A.J., and
MARY EILEEN KILBANE, J., CONCUR