

[Cite as *State ex rel. Huffman v. Ambrose*, 2010-Ohio-5376.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95546

**STATE OF OHIO, EX REL.
OREON J. HUFFMAN**

PETITIONER

VS.

HONORABLE JUDGE DICK AMBROSE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Procedendo
Motion No. 437362
Order No. 438579

RELEASE DATE: November 1, 2010

FOR RELATOR

Oreon Huffman, pro se
Inmate No. 152538
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P.O. Box 5600
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ATTORNEYS FOR RESPONDENT

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By: James E. Moss
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KENNETH A. ROCCO, J.:

{¶ 1} On August 12, 2010, the petitioner, Oreon Huffman, commenced this procedendo action against the respondent, Judge Dick Ambrose, to compel the judge to rule on various motions in the underlying cases, *State v. Huffman*, Cuyahoga County Common Pleas Court Case Nos. CR-497938 and CR-510290. On September 9, 2010, the respondent judge, through the Cuyahoga County Prosecutor, moved for summary judgment on the grounds of mootness and procedural deficiencies. Huffman never filed a brief in opposition. For the

following reasons, this court grants the judge's motion for summary judgment and denies the application for a writ of procedendo.

{¶ 2} A review of the docket in Case No. CR-497938 (Case 1) shows that on November 5, 2008, Huffman pleaded no contest to Count 1, drug trafficking; Count 3, drug possession; and Count 4, possession of criminal tools. The judge sentenced him to 12 months on each count to be served concurrently. Huffman appealed this decision in *State v. Huffman*, Cuyahoga County Court of Appeals Case No. 92477 which was pending when Huffman filed this writ action. In Case No. CR-510290 (Case 2), the docket shows that on November 5, 2008, Huffman pleaded guilty to Counts 1 and 2, drug trafficking; Count 3, drug possession; Count 4, endangering children; and Count 5, possession of criminal tools. The judge sentenced him to 18 months on Counts 1 and 2, 12 months on Counts 3 and 5, and 180 days on Count 4. The judge ordered that Counts 1, 2, 3, and 5 are to run concurrent to each other, but consecutive to Count 4, for a total of 24 months.¹ Huffman also appealed this case in, *State v. Huffman*, Cuyahoga County Court of Appeals Case No. 93000, which was pending when Huffman filed this writ action. Both sentencing entries specified that the Sheriff was to calculate jail-time credit.

¹ In November 2008, Huffman had a third case pending, *State v. Huffman*, Cuyahoga County Common Pleas Court Case No. CR-516351; a review of the docket in that case shows that Huffman was found not guilty on all counts.

{¶ 3} In Case 1, Huffman filed a motion for additional jail-time credit on April 19, 2010, and he filed a renewed motion for jail-time credit on May 10, 2010. In Case 2, on January 26, 2010, Huffman moved for an additional 18 days of jail-time credit. On April 19, 2010, he filed again for additional jail-time credit and renewed that motion on May 10, 2010. On June 1, 2010, he filed a postconviction relief petition, and finally on June 7, 2010, he filed a motion for an appeal bond.²

{¶ 4} As shown by the certified exhibits attached to the respondent's motion for summary judgment, Judge Ambrose on September 7, 2010, in Case 1 denied Huffman's motion for additional jail-time credit and clarified that Huffman was entitled to a total of 198 days of credit through April 10, 2009. Similarly in Case 2, Judge Ambrose denied Huffman's motion for additional jail-time credit and clarified that through September 8, 2010, Huffman had served a total of 713 days of his 730-day sentence. Also on September 7, 2010, the judge denied Huffman's postconviction relief petition with findings of fact and conclusions of law.

{¶ 5} 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

² Previously in Court of Appeals Case No. 93000, he had moved for an appeal bond; this court denied that motion on June 11, 2009.

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.

{¶ 6} The attachments to the respondent's summary judgment motion establish that Judge Ambrose has proceeded to judgment on the motions for additional jail-time credit and the postconviction relief petition. Accordingly, those claims are moot.

{¶ 7} This court also denies Huffman's claim for procedendo on his motion for appellate bond. First, the claim was not ripe when he commenced this writ action, because that motion had only been pending for approximately two months.

Thus, an inordinate amount of time had not elapsed to warrant procedendo to compel a ruling. Sup.R. 40(A)(3) provides that motions shall be ruled upon within 120 days from the date of filing. Thus, a complaint in procedendo to compel a ruling on a motion which has been pending approximately 70 days is premature. *State ex rel. Rodgers v. Cuyahoga Cty. Court of Common Pleas* (1992), 83 Ohio App.3d 684, 615 N.E.2d 689 and *State ex rel. Byrd v. Fuerst* (July

12, 1991), Cuyahoga App. No. 61985. Moreover, this claim also appears to be moot. Judge Ambrose clarified that as of September 8, 2010, Huffman had approximately 17 days left on his longer sentence in Case 2. Seventeen days have since expired, and Huffman's sentence should be served in full, thus eliminating the need for an appeal bond. This court also notes, pursuant to Evid.R. 201(B)(2), that the Ohio Department of Rehabilitation and Correction's website no longer lists an Oreon Huffman among its inmates. See <http://www.drc.ohio.gov/OffenderSearch/Search.aspx>.³

{¶ 8} Additionally, Huffman failed to support his complaint with an affidavit “specifying the details of the claim” as required by Local Rule 45(B)(1)(a). *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077; and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899.

{¶ 9} The petitioner has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the relator within the previous five years in any state or federal court. His failure to comply with R.C. 2969.25 warrants dismissal of the complaint for a writ of procedendo. *State ex rel. Zanders v. Ohio Parole Board*, 82 Ohio St.3d 421, 1998-Ohio-218,

³ In *State ex rel. Barr v. Pittman*, 2010-Ohio-4989, the Supreme Court of Ohio relied on the Department's website to show that the relator was still imprisoned on other convictions.

696 N.E.2d 594 and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242. He 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 relator. *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.

{¶ 10} Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of procedendo. Petitioner to pay costs. This court further orders the Clerk of the Eighth District Court of Appeals to serve notice of this judgment upon all parties as required by Civ.R. 58(B).

KENNETH A. ROCCO, JUDGE

SEAN C. GALLAGHER, A.J., and
COLLEEN CONWAY COONEY, J., CONCUR