

[Cite as *State ex rel. Torrestoro v. Donnelly*, 2011-Ohio-4832.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97050

**STATE OF OHIO, EX REL.
ANGEL TORRESTORO**

RELATOR

vs.

HON. MICHAEL P. DONNELLY, JUDGE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Procedendo
Motion No. 446863
Order No. 447551

RELEASE DATE: September 19, 2011

FOR RELATOR

Angel Torrestoro, pro se
Inmate No. A591-758
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ATTORNEYS FOR RESPONDENT

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The Justice Center
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FRANK D. CELEBREZZE, JR., P.J.:

{¶ 1} On July 18, 2011, relator, Angel Torrestoro, commenced this mandamus action to compel the respondent judge to rule on a postconviction relief petition, which Torrestoro filed on January 6, 2011 in the underlying case, *State v. Angel Torrestoro*, Cuyahoga County Common Pleas Court Case No. CR-539287. Torrestoro also seeks a ruling on his motion to vacate a fine in the underlying case, which he claims he filed shortly after filing the postconviction relief petition. On August 12, 2011, respondent moved for

summary judgment on the grounds of mootness. Attached to the dispositive motion was a copy of a journal entry, signed and file-stamped August 12, 2011, containing the findings of fact and conclusions of law denying Torrestoro's petition.¹ Respondent also noted that the docket for the underlying case showed no motion to vacate a fine. Torrestoro never filed a brief in opposition. For the following reasons, this court grants respondent's motion for summary judgment.

{¶ 2} The findings of fact and conclusions of law deny the postconviction relief petition. The journal entry establishes that the trial court has fulfilled its duty to issue the findings of fact and conclusions of law and that Torrestoro has received his requested relief, a resolution of his postconviction relief petition. Because this court's independent review of the docket confirms that no motion to vacate the fine has been filed and because Torrestoro did not dispute the motion for summary judgment, this court denies the application for a writ of procedendo on the "motion to vacate fine" claim.

{¶ 3} To the extent that there is any irregularity regarding which trial court judge issued the ruling, that issue is properly addressed on appeal, rather than through an extraordinary writ. *State ex rel. Berger v.*

¹ Judge Ronald Suster signed the findings of fact and conclusions of law, although Judge Michael Donnelly is the judge assigned to the underlying case and the named respondent.

McMonagle (1993), 6 Ohio St.3d 28, 451 N.E.2d 225, certiorari denied (1983), 469 U.S. 1017, 104 S.Ct. 1983, 78 L.Ed2d 723; and *State ex rel. Novak v. Boyle*, Cuyahoga App. No. 85358, 2005-Ohio-1199.

{¶ 4} Accordingly, the court grants respondent's motion for summary judgment and denies the application for a writ of procedendo. Parties to bear their own 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).

Writ denied.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

JAMES J. SWEENEY, J., and
EILEEN A. GALLAGHER, J., CONCUR