

[Cite as *Benson v. Callahan*, 2014-Ohio-3243.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101435

JAMES BENSON #494-913

RELATOR

vs.

JUDGE KENNETH CALLAHAN

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus and/or Procedendo
Motion No. 476060
Order No. 476466

RELEASE DATE: July 13, 2014

RELATOR

James Benson, pro se
#494-913, M.C.I.
P.O. Box 57
Marion, Ohio 43301

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
James E. Moss
Assistant County Prosecutor
The Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, J.:

{¶1} James Benson has filed a complaint for a writ of mandamus and/or procedendo. Benson seeks an order from this court that requires Judge Kenneth Callahan to render a ruling with regard to a motion to vacate and set aside sentence that was filed in *State v. Benson*, Cuyahoga C.P. No. CR-05-465675-A.

{¶2} Attached to Judge Callahan's motion for summary judgment is a copy of a judgment entry, journalized on June 23, 2014, which demonstrates that a ruling has been rendered with regard to Benson's motion to vacate and set aside sentence. Thus, the complaint for a writ of mandamus and/or procedendo is moot. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723; *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983).

{¶3} It must also be noted that Benson's complaint did not contain a sworn affidavit that specified the details of his claim required by Loc.App.R. 45(B)(1)(a), or an affidavit that specified each civil action or appeal of a civil action filed within the last five years as required by R.C. 2969.25(A). The failure to comply with the requirements of Loc.App.R. 45(B)(1)(a) and R.C. 2969.25(A) warrants dismissal of Benson's complaint for a writ of mandamus and/or procedendo. *See State ex rel. Washington v. Ohio Adult Parole Auth.*, 87 Ohio St.3d 258, 1999-Ohio-53, 719 N.E.2d 544; *State ex rel. Jones v. McGinty*, 8th Dist. Cuyahoga No. 92602, 2009-Ohio-1258; *State ex rel. Hightower v. Russo*, 8th Dist. Cuyahoga No. 82321, 2003-Ohio-3679.

{¶4} Accordingly, we grant Judge Callahan's motion for summary judgment.

Costs to Judge Callahan. Costs waived. The court directs the clerk of court to serve all parties with notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶5} Writ denied.

MARY EILEEN KILBANE, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
PATRICIA A. BLACKMON, J., CONCUR