

[Cite as *State ex rel. Montanez v. Sutula*, 2014-Ohio-3825.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 101525

---

**STATE OF OHIO EX REL.,  
SAMMY MONTANEZ**

RELATOR

vs.

**JUDGE JOHN D. SUTULA**

RESPONDENT

---

**JUDGMENT:  
WRIT DENIED**

---

Writ of Procedendo  
Order No. 477251  
Motion No. 476461

**RELEASE DATE:** September 3, 2014

**FOR RELATOR**

Sammy Montanez, pro se  
Mansfield Correctional Institution  
Inmate No. 492-270  
P.O. Box 788  
Mansfield, OH 44901

**ATTORNEYS FOR RESPONDENT**

Timothy J. McGinty  
Cuyahoga County Prosecutor

By: James E. Moss  
Assistant County Prosecutor  
9th Floor Justice Center  
1200 Ontario Street  
Cleveland, OH 44113

MELODY J. STEWART, J.:

{¶1} Sammy Montanez has filed a complaint for a writ of procedendo. Montanez seeks a writ that requires Judge John D. Sutula to render a ruling with regard to a motion to “issue revised journal entry of conviction” filed on March 10, 2014, that he alleges is necessary in order to create a final appealable order in compliance with Crim.R. 32(C) in *State v. Montanez*, Cuyahoga C.P. No. CR-04-454739-A. We decline to issue a writ of procedendo because respondent has performed the requested relief and the writ is now moot.

{¶2} Attached to respondent’s motion for summary judgment is a copy of a judgment entry, journalized on July 3, 2014, which demonstrates that the court has ordered Montanez to be returned to the trial court’s jurisdiction for a resentencing hearing, and the order specifically references this original action as the impetus of the order. Accordingly, Montanez’s request for a writ of procedendo is moot. *State ex rel. Fontanella v. Kontos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220; *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631, 791 N.E.2d 459. A writ of procedendo will not issue to compel the performance of a duty that has already been performed. *State ex rel. Rose v. McGinty*, 123 Ohio St.3d 86, 2009-Ohio-4050, 914 N.E.2d 366; *State ex rel. Sevayega v. McMonagle*, 122 Ohio St.3d 54, 2009-Ohio-2367, 907 N.E.2d 1180.

{¶3} Judge Sutula’s motion for summary judgment is granted. Costs to respondent. Costs waived. The court directs the clerk of courts to serve all parties

with notice of this judgment and the date of entry upon the journal as required by Civ.R.  
58(B).

{¶4} Writ denied.

---

MELODY J. STEWART, JUDGE

MARY J. BOYLE, A.J., and  
LARRY A. JONES, J., CONCUR