

[Cite as *State ex rel. Atwater v. Gall*, 2014-Ohio-3928.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101483

STATE OF OHIO, EX REL.
JOSEPH ATWATER

RELATOR

vs.

STEVEN E. GALL, JUDGE,
COURT OF COMMON PLEAS

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Procedendo
Motion No. 476119
Order No. 477481

RELEASE DATE: September 9, 2014

FOR RELATOR

Joseph Atwater, pro se
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ATTORNEYS FOR RESPONDENT

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

MARY J. BOYLE, A.J.:

{¶1} On June 4, 2014, the relator, Joseph Atwater, commenced this procedendo action to compel a ruling on his motion to merge allied offenses, which he filed on November 4, 2013, in the underlying case, *State v. Atwater*, Cuyahoga C.P. No. CR-01-409121-ZA.¹ On June 25, 2014, the respondent moved for summary judgment on the grounds of mootness. Attached to the respondent's dispositive motion was a copy of a certified November 11, 2013 journal entry in which the respondent denied the motion to merge allied offenses. On July 25, 2014, Atwater filed a brief in opposition. Atwater argues that the motion for summary judgment is invalid because Judge Timothy McGinty was the originally assigned judge and presided over the case, and Atwater now refuses to waive any potential conflict of interest.² Atwater also argues that the state received extensions of time to respond to his motion after November 11, 2013; therefore, the journal entry cannot be binding. Atwater also seeks to cure various filing defects, such as including a prison cashier's affidavit and Loc.R. 45 affidavit. Nevertheless, the November 11, 2013 journal entry establishes that the respondent proceeded to judgment on the subject motion, and this matter is moot.

¹ Atwater named Judge Daniel Gaul as the respondent. However, Judge Steven Gall is the judge assigned to the underlying case. Accordingly, this court substitutes Judge Steven Gall as the respondent.

² In October 2001, Atwater pleaded guilty to involuntary manslaughter with a three-year firearm specification and attempted murder. The court imposed a 20-year sentence. Timothy McGinty is now the Cuyahoga County prosecutor.

{¶2} Accordingly, this court grants the respondent's motion for summary judgment and denies the application for a writ of procedendo. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶3} Writ denied.

MARY J. BOYLE, ADMINISTRATIVE JUDGE

FRANK D. CELEBREZZE, JR., J., and
SEAN C. GALLAGHER, J., CONCUR