

[Cite as *State ex rel. Berlingeri*, 2014-Ohio-406.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 100671**

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**STATE OF OHIO, EX REL.  
DOMINIC BERLINGERI**

RELATOR

VS.

**JUDGE BRIAN J. CORRIGAN**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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Writ of Procedendo  
Motion No. 470804  
Order No. 471571

**RELEASE DATE:** February 4, 2014

**FOR RELATOR**

Dominic Berlingeri, Jr.  
Inmate No. A 583-358  
Allen Correctional Institution  
Attn: Unit C  
2338 North West Street  
Lima, OH 45801

**ATTORNEYS FOR RESPONDENT**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
BY: James E. Moss  
Assistant Prosecuting Attorney  
The Justice Center  
1200 Ontario Street  
Cleveland, OH 44113

SEAN C. GALLAGHER, J.:

{¶1} On November 26, 2013, relator Dominic Berlingeri commenced this procedendo action against Judge Brian Corrigan to compel him to rule on his petition to vacate allied offenses of similar import in *State v. Berlingeri*, Cuyahoga C.P. No. CR-527719-G, which was filed on March 29, 2013. On December 18, 2013, respondent judge filed a motion for summary judgment, which Berlingeri has not opposed. The motion for summary judgment is granted, and the petition is denied for the reasons that follow.

{¶2} Attached to the motion for summary judgment is a copy of a journal entry that indicates that on December 17, 2013, Judge Corrigan denied Berlingeri's petition to vacate allied offenses of similar import, rendering the petition for a writ of procedendo moot. *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983); *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 658 N.E.2d 723 (1996). Additionally, the petition does not comply with Loc.App.R. 45(B)(1)(a), which is a separate ground that warrants dismissal. *State ex rel. Fuller v. Friedland*, 8th Dist. Cuyahoga No. 76750, 1999 Ohio App. LEXIS 4856 (Oct. 14, 1999), citing *State ex rel. Sherrills v. Court of Common Pleas*, 8th Dist. Cuyahoga No. 69707 (Dec. 1, 1995) ("failure to provide this court with a supporting affidavit warrants dismissal").

{¶3} Accordingly, we grant the respondent's unopposed motion for summary judgment. Respondent to bear costs, but costs are waived. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

{¶4} Writ denied.

SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, A.J., and  
KENNETH A. ROCCO, J., CONCUR