

[Cite as *State ex rel. Brown v. Sutula*, 2014-Ohio-4583.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101766

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**STATE OF OHIO, EX REL.  
JERRY V. BROWN**

RELATOR

vs.

**JUDGE JOHN SUTULA**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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Writ of Mandamus  
Motion No. 478719  
Order No. 478798

**RELEASE DATE:** October 10, 2014

**FOR RELATOR**

Jerry V. Brown  
Inmate No. A-304-692  
Grafton Correctional Institution  
2500 South Avon-Belden Road  
Grafton, Ohio 44044

**ATTORNEYS FOR RESPONDENT**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
By: James E. Moss  
Assistant County Prosecutor  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., P.J.:

{¶1} Jerry V. Brown, relator, has petitioned this court to issue a writ of mandamus to compel the trial court to rule on his motion for modification or correction of sentence, filed September 27, 2013, in *State v. Brown*, Cuyahoga C.P. No. CR-94-317508-ZA. Respondent has filed a motion for summary judgment. We grant respondent's motion for summary judgment and deny relator's complaint because it is moot.

{¶2} Respondent's motion for summary judgment attached a copy of the trial court's entry that was journalized on September 5, 2014, which demonstrates that a ruling has been rendered with regard to relator's motion. "[R]elief is unwarranted because mandamus and procedendo will not compel the performance of a duty that has already been performed." *State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49, ¶ 4.

{¶3} Accordingly, we grant respondent's motion for summary judgment and deny relator's complaint for writ of mandamus. Costs are assessed against relator but are waived. The court directs the clerk of courts to serve all parties with notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶4} Writ denied.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

KENNETH A. ROCCO, J., and  
TIM McCORMACK, J., CONCUR

