

[Cite as *State ex rel. Steele v. Gall*, 2015-Ohio-2164.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102683

**STATE OF OHIO, EX REL.
CHARLES STEELE**

RELATOR

vs.

JUDGE STEVEN GALL

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Procedendo
Motion No. 484893
Order No. 485615

RELEASE DATE: June 1, 2015

FOR RELATOR

Charles Steele, pro se
Inmate No. 306-310
Chillicothe Correctional Institution
15802 State Rte. 104 N.
Chillicothe, OH 45601

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: James E. Moss
Assistant Prosecuting Attorney
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, OH 44113

SEAN C. GALLAGHER, J.:

{¶1} Charles M. Steele has filed a complaint for a writ of procedendo. Steele seeks an order from this court that requires Judge Steven Gall to perform the following acts in *State v. Steele*, Cuyahoga C.P. No. CR-13-575214-A: (1) render a ruling with regard to Steele's application for DNA testing; (2) provide Steele with a copy of a resentencing journal entry that was journalized on January 28, 2015; and (3) issue a resentencing journal entry that contains a statement that Steele was advised of the right to an appeal. Judge Gall has filed a motion for summary judgment, which we grant for the following reasons.

{¶2} A writ of procedendo shall issue when a court has either refused to render a judgment or has unnecessarily delayed in proceeding to judgment. *State ex rel. R.W. Sidley, Inc. v. Crawford*, 100 Ohio St.3d 113, 2003-Ohio-5101, 796 N.E.2d 929; *State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 705 N.E.2d 1227 (1999). Attached to Judge Gall's motion for summary judgment are two journal entries, as journalized on March 30, 2015, and April 1, 2015, which demonstrate that rulings have been rendered with regard to Steele's application for DNA testing. Thus, the request for a writ of procedendo, with regard to the request for a ruling on the application for DNA testing, 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 Gall also possesses no duty to provide Steele with a copy of a resentencing journal entry that was rendered on January 28, 2015. Crim.R. 32(C) provides that “[t]he judge shall sign the judgment and the clerk shall enter it on the journal.” *State ex rel. Ford v. Admin. Judge Cuyahoga Cty. C.P.*, 8th Dist. Cuyahoga No. 100053, 2013-Ohio-4197; *State v. Mayo*, 8th Dist. Cuyahoga No. 80216, 2002 Ohio App. LEXIS 2075 (Apr. 24, 2002); *State ex rel. Daniels v. Fuerst*, 8th Dist. Cuyahoga No. 72192, 1997 Ohio App. LEXIS 2360 (May 29, 1997).

{¶4} Also, there exists no duty under Crim.R. 32 to state in the resentencing journal entry that Steele was advised of his right to an appeal.

[Relator] does not provide this court with any controlling legal authority requiring a sentencing court to state in the sentencing entry that the trial court informed a criminal defendant of the right to appeal. That is, Crim.R. 32(C) — specifying the content of a judgment — does not require that the trial court memorialize the Crim.R. 32(B) notification of the right to appeal in the sentencing entry. Compare *State v. Hunter*, Cuyahoga App. No. 92626, 2010 Ohio 657 (failure to inform defendant during resentencing of right to appeal was error). For purposes of this original action, however, this court need not determine whether the respondents erred during [relator’s] July 2010 resentencing. Rather, *Hunter* demonstrates that [relator] had an adequate remedy by way of appeal to challenge the propriety of his resentencing.

Relator’s complaint does not establish that he has a clear legal right to a new sentencing entry or that respondents have a corresponding duty.

Likewise, he had an adequate remedy by way of appeal.

State ex rel. Wright v. Cuyahoga Cty. C.P. Court, 8th Dist. Cuyahoga No. 96397, 2011-Ohio-2159, ¶ 2-3.

{¶5} Finally, Steele has failed to comply with R.C. 2969.25(C)(1), which mandates that he file a statement setting forth his inmate account “for the preceding six months, as certified by the institutional cashier.” *State ex rel. Castro v. Corrigan*, 129 Ohio St.3d 342, 2011-Ohio-4059, 952 N.E.2d 497.

{¶6} Accordingly, Judge Gall’s motion for summary judgment is granted. Costs to Steele. 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).

{¶7} Writ denied.

SEAN C. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and
TIM McCORMACK, J., CONCUR