

[Cite as *State ex rel. Davis v. Calabrese*, 2015-Ohio-3774.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103076

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STATE OF OHIO, EX REL.  
WILEY DAVIS

RELATOR

vs.

JUDGE DEENA R. CALABRESE

RESPONDENT

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**JUDGMENT:**  
WRIT DENIED

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Writ of Procedendo  
Motion No. 486428  
Order No. 488514

**RELEASE DATE:** September 11, 2015

**FOR RELATOR**

Wiley Davis, pro se  
Grafton Correctional Institution  
2500 S. 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., A.J.:

{¶1} On May 28, 2015, the relator, Wiley Davis, commenced this mandamus or procedendo action against Judge Donald Nugent to compel the judge to rule on his motion for resentencing, which he filed in the underlying case, *State v. Davis*, Cuyahoga C.P. No. CR-91-275129, on March 10, 2014.<sup>1</sup> On June 10, 2015, the respondent moved for summary judgment, inter alia, on the grounds of mootness. Attached to the summary judgment motion is a certified copy of a June 3, 2015 journal entry in which Judge Calabrese denied Davis's March 10, 2014 motion for resentencing. Davis never filed a response. The June 3, 2015 entry establishes that the respondent judge has fulfilled her duty to proceed to judgment on the subject motion and that this writ action is moot.

{¶2} The relator has also failed to comply with R.C. 2969.25, which requires an affidavit that describes each civil action or appeal filed by the relator within the previous five years in any state or federal court. The relator's failure to comply with R.C. 2969.25 warrants dismissal of the complaint for an extraordinary writ. *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 1998-Ohio-218, 696 N.E.2d 594 and *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 1997-Ohio-117, 685 N.E.2d 1242.

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<sup>1</sup>Davis named Judge Nugent as the respondent. However, he is no longer a Cuyahoga County Common Pleas Court judge. Deena Calabrese is the successor judge, and this court substitutes her as the respondent pursuant to Civ.R. 21.

{¶3} Accordingly, this court grants the respondent judge's summary judgment motion and denies the application for a writ of mandamus or 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).

{¶4} Writ denied.

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FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

KATHLEEN ANN KEOUGH, J., and  
PATRICIA A. BLACKMON, J., CONCUR