

[Cite as *State ex rel. Gray v. McDonnell*, 2016-Ohio-3470.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104240

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STATE OF OHIO, EX REL.  
RICARDO GRAY

RELATOR

vs.

JUDGE NANCY MCDONNELL

RESPONDENT

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**JUDGMENT:**  
**WRIT DENIED**

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Writ of Procedendo  
Motion No. 495225  
Order No. 496533

**RELEASE DATE:** June 15, 2016

**FOR RELATOR**

Ricardo Gray, pro se  
Inmate No. A368-431  
Lebanon Correctional Institution  
P.O. Box 56  
Lebanon, Ohio 45036

**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

MARY EILEEN KILBANE, P.J.:

{¶1} Ricardo Gray has filed a complaint for a writ of procedendo. Gray seeks an order from this court that requires Judge Nancy McDonnell to issue findings of fact and conclusions of law with regard to an R.C. 2953.21 petition for postconviction relief filed in *State v. Gray*, Cuyahoga C.P. No. CR-98-369837. We deny Gray’s request for a writ of procedendo and grant Judge McDonnell’s motion for summary judgment.

{¶2} R.C. 2953.21(C) and (G) provide that a trial court is required to issue findings of fact and conclusions of law upon disposition of a petition for postconviction relief, and a judgment entry filed without them “is incomplete and it does not commence the running of the time period for filing an appeal therefrom.” *State v. Mapson*, 1 Ohio St.3d 217, 218, 438 N.E.2d 910 (1982).

{¶3} However, R.C. 2953.23(A) provides that a timely petition for postconviction relief must be filed no later than 365 days after the date on which the trial court transcript is filed in the direct appeal of the judgment of conviction and sentence. And, under Ohio law, a trial court possesses no legal duty to issue findings of fact and conclusions of law when it denies an untimely petition for postconviction relief. *State ex rel. Dillion v. Cottrill*, 145 Ohio St.3d 264, 2016-Ohio-626, 48 N.E.3d 552; *State ex rel. James v. Coyne*, 114 Ohio St.3d 45, 2007-Ohio-2716, 867 N.E.2d 837.

{¶4} A review of the docket in CR-98-369837 demonstrates that the trial court transcripts were transmitted to this court on July 19, 1999. Gray did not file his petition for postconviction relief until June 15, 2015, more than 365 days after transmission of the trial transcripts to this court. Thus, Gray’s petition for postconviction relief was untimely filed and Judge McDonnell possessed no duty to issue findings of fact and conclusions of law upon disposition of the petition for postconviction relief. *State ex rel. Kimbrough v. Greene*, 98 Ohio St.3d 116, 2002-Ohio-7042, 781 N.E.2d 144; *State ex rel. Hilliard v. Russo*, 8th Dist. Cuyahoga No. 103466, 2016-Ohio-594.

{¶5} Accordingly, we grant Judge McDonnell’s motion for summary judgment. Costs to Gray. 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).

{¶6} Writ denied.

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MARY EILEEN KILBANE, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and  
SEAN C. GALLAGHER, J., CONCUR