

[Cite as *State ex rel. Pate v. Calabrese*, 2016-Ohio-411.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103648

**STATE OF OHIO, EX REL.
DONALD PATE, JR.**

RELATOR

vs.

JUDGE DEENA CALABRESE

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Procedendo
Motion No. 490715
Order No. 492552

RELEASE DATE: February 3, 2016

FOR RELATOR

Donald Pate, Jr., pro se
Inmate No. 590232
Ross Correctional Institution
P.O. Box 7010
Chillicothe, Ohio 45601

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

EILEEN A. GALLAGHER, P.J.:

{¶1} Donald Pate, Jr. has filed a complaint for a writ of procedendo. Pate seeks an order from this court that requires Judge Deena Calabrese to render a ruling, in *State v. Pate*, Cuyahoga C.P. No. CR-10-535104, with regard to a petition for postconviction relief filed on October 1, 2012. Judge Calabrese has filed a motion for summary judgment.

{¶2} Attached to Judge Calabrese's motion for summary judgment is a copy of a judgment entry, journalized on October 28, 2015, which demonstrates that a ruling has been rendered with regard to Pate's petition for postconviction relief. Thus, Pate's complaint for a writ of procedendo 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. In addition, a writ 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} Accordingly, we grant Judge Calabrese's motion for summary judgment. Costs to relator. Costs waived. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the docket as required by Civ.R. 58(B).

{¶4} Writ denied.

EILEEN A. GALLAGHER, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR