

[Cite as *State ex rel. Fortson v. Russo*, 2016-Ohio-7231.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104827

STATE OF OHIO, EX REL.
TIM FORTSON

RELATOR

vs.

JUDGE JOSEPH D. RUSSO

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Mandamus
Motion No. 499821
Order No. 500137

RELEASE DATE: September 30, 2016

FOR RELATOR

Tim Fortson, pro se
Inmate No. 332-587
Lake Erie Correctional Institution
P.O. Box 8000
Conneaut, Ohio 44030

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

PATRICIA ANN BLACKMON, J.:

{¶1} Tim Fortson has filed a complaint for a writ of mandamus. Fortson seeks an order from this court that requires Judge Joseph D. Russo to render a ruling with regard to a motion to vacate or set aside judgment of conviction or sentence filed in *State v. Fortson*, Cuyahoga C.P. No. CR-96-341112.¹ We sua sponte dismiss Fortson's complaint for a writ of mandamus.

{¶2} A review of the docket in CR-96-341112 clearly demonstrates that Fortson's motion to vacate or set aside judgment of conviction or sentence was denied on August 17, 2016. "[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. Herein, the request for relief is moot.

{¶3} Accordingly, we sua sponte dismiss Fortson's complaint for a writ of mandamus. 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 journal as required by Civ.R. 58(B).

{¶4} Complaint dismissed.

¹Pursuant to Civ.R. 25(D)(1), Judge Joseph D. Russo is substituted for the judge that was originally assigned to the underlying case

PATRICIA ANN BLACKMON, JUDGE

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MARY EILEEN KILBANE, P.J., and
ANITA LASTER MAYS, J., CONCUR