

[Cite as *State ex rel. Montanez v. Cuyahoga Cty. Court Reporter's Office*, 2016-Ohio-942.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103709

**STATE OF OHIO, EX REL.
SAMMY MONTANEZ**

RELATOR

vs.

**CUYAHOGA COUNTY COURT REPORTERS OFFICE,
ET AL.**

RESPONDENTS

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 491173
Order No. 493125

RELEASE DATE: March 8, 2016

FOR RELATOR

Sammy Montanez, pro se
Inmate No. 492270
Mansfield Correctional Institution
P.O. Box 788
Mansfield, Ohio 44901

ATTORNEYS FOR RESPONDENTS

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., J.:

{¶1} Sammy Montanez has filed a complaint for a writ of mandamus. Montanez seeks an order from this court that: 1) compels the Cuyahoga County Court Reporter's office to file in a pending appeal, *State v. Montanez*, 8th Dist. Cuyahoga No. 103045, the transcript of a resentencing hearing held on October 24, 2014, in *State v. Montanez*, Cuyahoga C.P. No. CR-04-454739; and 2) compels the Cuyahoga County Clerk of Courts, Nailah K. Byrd, to transfer the original papers filed in CR-04-454739 to the appeal pending in 8th Dist. Cuyahoga No. 103045. The respondents have filed a joint motion for summary judgment, which we grant for the following reasons.

{¶2} Initially, we find that the request for a writ of mandamus is moot. The appeal in 8th Dist. Cuyahoga No. 103045 was dismissed on November 13, 2015. No appeal exists at the present time that requires the filing of a transcript of proceedings or original papers. *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983); *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 658 N.E.2d 723 (1996).

{¶3} Notwithstanding that the request for a writ of mandamus is moot, a review of the record in 8th Dist. Cuyahoga No. 103045 clearly demonstrates that the original papers maintained in CR-04-454739 were transmitted to the clerk of the 8th District Court of Appeals on June 29, 2015. Thus, the Cuyahoga County Clerk of Courts has

discharged her duty to transmit the record as required by App.R. 9. *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 13, citing *Martin v. Judges of the Lucas Cty. Court of Common Pleas*, 50 Ohio St.3d 71, 72, 552 N.E.2d 906 (1990) (neither procedendo nor mandamus will compel the performance of a duty that has already been performed).

{¶4} Finally, Montanez has failed to establish that he possesses a clear legal right to compel the court reporter's office to file, at state's expense, the transcript of a resentencing hearing held on October 24, 2014. Montanez may be entitled to a transcript at state's expense of the resentencing hearing held on October 24, 2014, if he can demonstrate that he is indigent. However, neither the trial court nor this court on appeal has determined that Montanez is indigent for the purpose of providing a transcript at state's expense. *State ex rel. Seigler v. Rone*, 42 Ohio St.2d 361, 328 N.E.2d 811 (1975); *State ex rel. Jackson v. Official Court Reporter*, 8th Dist. Cuyahoga No. 98346, 2012-Ohio-3968; *State v. Bruce*, 8th Dist. Cuyahoga No. 92016, 2009-Ohio-6214; *State v. Walton*, 8th Dist. Cuyahoga No. 90140, 2008-Ohio-3550.

{¶5} Accordingly, we grant the joint motion for summary judgment. Costs to Montanez. 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.

FRANK D. CELEBREZZE, JR., JUDGE

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