

[Cite as *State ex rel. Peterson v. McClelland*, 2017-Ohio-9026.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106188

STATE OF OHIO, EX REL.
DAMIEN L. PETERSON

RELATOR

vs.

JUDGE ROBERT C. McCLELLAND

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Procedendo
Motion No. 510671
Order No. 511716

RELEASE DATE: December 8, 2017

FOR RELATOR

Damien L. Peterson, pro se
Inmate No. 503884
Richland Correctional Institution
1001 Olivesburg Road
Mansfield, Ohio 44901

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, P.J.:

{¶1} Damien L. Peterson has filed a complaint for a writ of procedendo through which he seeks an order that requires Judge Robert C. McClelland to issue a ruling with regard to a “motion to vacate sentence for lack of jurisdiction,” that was filed in *State v. Peterson*, Cuyahoga C.P. No. CR-05-471307. Peterson also seeks an order from this court that requires Judge McClelland “to comply with the order and mandate of the Eighth District Court of Appeals” rendered in *State v. Peterson*, 8th Dist. Cuyahoga No. 101727, 2015-Ohio-1152. Judge McClelland has filed a motion for summary judgment that is granted for the following reasons.

{¶2} In order for this court to issue a writ of procedendo, Peterson must demonstrate that he possesses a clear legal right to the relief requested and that there exists no adequate remedy in the ordinary course of the law. *State ex rel. Brown v. Shoemaker*, 38 Ohio St.3d 344, 528 N.E.2d 188 (1983). Peterson must also demonstrate that Judge McClelland possesses a clear legal duty, which requires him to proceed to judgment. *State ex rel. Cochran v. Quillin*, 20 Ohio St.2d 6, 251 N.E.2d 607 (1969). Finally, a writ of procedendo is appropriate when a court has refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Doe v. Tracy*, 51 Ohio App.3d 198, 555 N.E.2d 674 (12th Dist.1988).

{¶3} Attached to Judge McClelland's motion for summary judgment is an exhibit that demonstrates a ruling has been rendered with regard to the motion to vacate sentence.

On September 25, 2017, the motion to vacate was denied.

{¶4} In addition, a review of the docket maintained in CR-05-471307 clearly demonstrates that the mandate of this court, that required Judge McClelland to make findings as required by R.C. 2929.20(J) prior to granting judicial release, is moot. On July 22, 2015, Judge McClelland issued a journal entry that provided that:

The order of the court of appeals [in Appeal No. 101727] has been rendered moot. Defendant [Peterson] violated the terms for his judicial release and was sentenced to serve the remainder of his prison sentence.

{¶5} Thus, Peterson's complaint for a writ of procedendo is moot as it relates to the motion to vacate and the request for Judge McClelland to follow the mandate of this court rendered in Appeal No. 101727. *State ex rel. Jerningham v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 278, 1996-Ohio-117, 658 N.E.2d 723; *State ex rel. Gantt v. Coleman*, 6 Ohio St.3d 5, 450 N.E.2d 1163 (1983). *Henderson v. Saffold*, 8th Dist. Cuyahoga No. 100406, 2014-Ohio-306.

{¶6} Accordingly, we grant Judge McClelland's motion for summary judgment. 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).

{¶7} Writ denied.

MARY J. BOYLE, PRESIDING JUDGE

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