

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO ex rel.)	
KEVIN L. GREEN, SR.,)	CASE NO. 05 MA 18
)	
RELATOR,)	
)	
- VS -)	<u>OPINION</u>
)	<u>AND</u>
)	<u>JOURNAL ENTRY</u>
JUDGE JOHN M. DURKIN,)	
MAHONING COUNTY COURT OF)	
COMMON PLEAS,)	
)	
RESPONDENT.)	
)	

CHARACTER OF PROCEEDINGS: Writ of Procedendo; Motion to Dismiss.

JUDGMENT: Writ of Procedendo Dismissed as Moot;
Motion to Dismiss Granted.

APPEARANCES:

For Relator:

Kevin L. Green, Sr., Pro Se
#399-990
Lebanon Correctional Institution
P.O. Box 56
Lebanon, Ohio 45036

For Respondent:

Attorney Paul Gains
Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

JUDGES:

Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: July 28, 2005

PER CURIAM:

{¶1} On January 25, 2005, Relator Kevin L. Green, Sr. filed a Writ of Procedendo with this court requesting an order compelling Mahoning County Common Pleas Court Judge John M. Durkin to rule on Green's motion for leave to file a motion for a new trial. The motion for leave was filed in August 2004 in Common Pleas Case No. 99CR893.

{¶2} On March 10, 2005, this court issued an order granting Respondent 28 days to file an answer or otherwise plead. (03/10/05 J.E.). On April 26, 2005, Relator filed a request for imposition of sanctions because Respondent had not yet responded to the petition for writ of procedendo. On May 23, 2005, this court issued a journal entry stating the request for sanctions would be addressed in the decision of the petition for writ of procedendo. On May 31, 2005, Relator filed a second request for sanctions.

{¶3} On July 8, 2005, Respondent filed a "Motion for Leave to File Motion to Dismiss Realtor's petition for Writ of Procedendo Instanter." Attached to the motion is a copy of Judge Durkin's ruling denying Green's motion for new trial. This decision was issued on April 29, 2005.

{¶4} The principles demonstrating entitlement to a writ are discussed in *State ex rel. Miley v. Parrott*, 77 Ohio St.3d 64, 1996-Ohio-350. As stated therein:

{¶5} "In order to be entitled to a writ of procedendo, a relator must establish a clear legal right to require the court to proceed, a clear legal duty on the party of the court to proceed, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas* (1995), 72 Ohio St.3d 461, 462. A writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna* (1995), 73 Ohio St.3d 180, 184. An 'inferior court's refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy.' *State ex rel. Dehler v. Sutula* (1995), 74 Ohio St.3d 33, 35, quoting *State ex rel. Levin v. Sheffield Lake* (1994), 70 Ohio St.3d 104, 110."

{¶6} Given the April 29, 2005 common pleas court ruling, which denied the motion for a new trial, Respondent has ruled upon the relevant motion. Thus, this petition for writ of procedendo is moot. "Neither procedendo nor mandamus will compel the performance of a duty that has already been performed." *State ex rel. Kreps v. Christiansen*, 88 Ohio St.3d 313, 318, 2000-Ohio-335, citing *State ex rel. Grove v. Nadel*, 84 Ohio St.3d 252, 253, 1998-Ohio-541.

{¶7} For the foregoing reasons, Respondent's motion to dismiss the petition is granted. Relator's Petition for Writ of Procedendo is dismissed as moot. These rulings render any other pending motions in the above captioned case overruled.

{¶8} Costs taxed against Relator. Final order. Clerk to serve notice as provided by the Civil Rules.

Donofrio, P.J., concurs.

Vukovich, J., concurs.

DeGenaro, J., concurs.