

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
BELMONT COUNTY

STATE EX REL. JOHN T. WISE,

Relator,

v.

BELMONT COUNTY COURT OF COMMON PLEAS,

Respondent.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 24 BE 0052**

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Writ of Mandamus

**BEFORE:**

Cheryl L. Waite, Carol Ann Robb, Katelyn Dickey, Judges.

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**JUDGMENT:**

Dismissed.

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John T. Wise, Pro se, Relator

*Atty. J. Kevin Flanagan*, Belmont County Prosecutor, for Respondent.

Dated: February 21, 2025

**PER CURIAM.**

{¶1} This matter is before the Court on Relator John T. Wise’s petition for a writ of mandamus against Respondent, the Belmont County Court of Common Pleas. Relator seeks to compel Respondent’s compliance with this Court’s mandate in *State v. Wise*, 2024-Ohio-2465, arguing that Respondent has failed to properly effectuate the directives set forth therein. However, because a court of common pleas is not sui juris, and thus not a legal entity capable of being sued, we must sua sponte dismiss the petition.

{¶2} Relator’s underlying criminal proceedings began in 2017 when he was indicted on one count of felonious assault, a second-degree felony. He pleaded guilty pursuant to an agreement that imposed a five-year term of community control, with the trial court’s sentencing entry stating that he faced up to eight years of incarceration if he violated its conditions. Years later, following an alleged series of community control violations, the trial court revoked Relator’s community control and sentenced him to four years in prison, to be served consecutively to a separate term imposed in Jefferson County.

{¶3} On appeal, this Court, relying on R.C. 2929.19(B)(5) and binding precedent from the Supreme Court of Ohio in *State v. Brooks*, 2004-Ohio-4746, and *State v. Howard*, 2020-Ohio-3195, concluded that the trial court erred by initially failing to properly advise Relator of the specific prison term he faced should he violate community control, thereby rendering its revocation and imposition of a prison term improper. Because the trial court erred in this respect, we reversed and remanded this matter for resentencing, precluding imposition of a prison term. *Wise* at ¶ 17, citing *Brooks*. We provided this directive both at the conclusion of our opinion and in the incorporated judgment entry.

{¶4} Following remand, on July 9, 2024, the trial court issued a judgment entry setting a pretrial/scheduling conference “in accordance with the Opinion and Judgment Entry of the Seventh District Court of Appeals.” However, on July 31, 2024, despite this Court’s unequivocal directive in *Wise*, the trial court issued an order continuing the case until August 24, 2026, citing the parties’ joint request and stating that Relator’s conduct in the interim would influence its decision.

{¶5} Relator asserts that this two-year delay violates this Court’s mandate, and seeks a writ of mandamus compelling Respondent to proceed with resentencing immediately. However, his petition is procedurally defective, as it improperly names the Belmont County Court of Common Pleas as the Respondent. It is well established that a court of common pleas is not *sui juris*, and lacks the capacity to sue or be sued in its own name. *State ex rel. Smith v. Hamilton Cty. Court of Common Pleas*, 2024-Ohio-2779, ¶ 7.

{¶6} A court of appeals may dismiss a complaint *sua sponte* if the claimant obviously cannot prevail on the facts alleged in the complaint. *State ex rel. Mayer v. Henson*, 2002-Ohio-6323, ¶ 11. Dismissal is appropriate only if, after presuming the truth of all material factual allegations of the petition and making all reasonable inferences in the relator’s favor, it appears beyond doubt that the relator can prove no set of facts entitling him to the requested extraordinary relief. *Id.*

{¶7} In light of these precedents, and after presuming the truth of all material factual allegations in Relator’s petition while construing all reasonable inferences in his favor, it is evident that he cannot establish a legally cognizable claim for relief against this

named Respondent. Accordingly, while we recognize the significant delay in executing our earlier mandate, dismissal of this original action is warranted.

{¶8} While this Court’s mandate in *Wise* does not dictate the precise timeframe in which a resentencing must occur, judicial efficiency and the interests of justice generally favor the prompt resolution of remanded proceedings. The Rules of Superintendence for the Courts of Ohio, as promulgated by the Supreme Court of Ohio, emphasize the importance of resolving cases without undue delay. For instance, Sup.R. 39(B)(1) directs that all criminal cases be tried within six months of arraignment, while Sup.R. 39(B)(4) requires sentencing to occur within fifteen days of a verdict or the receipt of a pre-sentence investigation report. Sup.R. 40(A) requires that matters under advisement be decided within 120 days. While these provisions do not directly govern resentencing following remand, they reflect the judiciary’s broader obligation to ensure timely adjudication. Given the already protracted nature of Relator’s community control violation proceedings and improper sentence, reconsideration of the August 24, 2026 continuance may better align with the objectives of appellate review and the prompt administration of justice.

{¶9} For these reasons, this Court sua sponte dismisses Relator’s petition for a writ of mandamus. Costs waived.

**JUDGE CHERYL L. WAITE**

**JUDGE CAROL ANN ROBB**

**JUDGE KATELYNN DICKEY**

