

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO EX REL.,
TEVIN P. TAYLOR,

:

Relator,

:

No. 112614

v.

:

JUDGE DEENA CALABRESE,

:

Respondent.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED IN PART AND
GRANTED IN PART

RELEASED AND JOURNALIZED: May 17, 2023

Writ of Procedendo
Motion No. 563966
Order No. 564301

Appearances:

Tevin P. Taylor, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and James E. Moss, Assistant Prosecuting
Attorney, *for respondent*.

EILEEN A. GALLAGHER, P.J.:

{¶ 1} Tevin P. Taylor, the relator, has filed a complaint for a writ of procedendo. Taylor seeks an order from this court that compels Judge Deena R.

Calabrese, the respondent, to render rulings with regard to motions filed in *State v. Taylor*, Cuyahoga C.P. No. CR-09-531560-A; “motion for jail time credit” and “motion for an order for the clerk to return defendant’s property.” Judge Calabrese has filed a motion for summary judgment that is granted in part and denied in part.

{¶ 2} Attached to the motion for summary judgment is a copy of a judgment entry, journalized April 16, 2023, which demonstrates Judge Calabrese has granted Taylor’s motion for jail-time credit. Relief is unwarranted because the request for a writ of procedendo, with regard to the motion for jail-time credit, is moot. Procedendo will not compel the performance of a duty that has already been performed. *State ex rel. Ames v. Pokorny*, 164 Ohio St.3d 538, 2021-Ohio-2070, 173 N.E.3d 1208; *Thompson v. Donnelly*, 155 Ohio St.3d 184, 2018-Ohio-4073, 119 N.E.3d 1292; *State ex rel. S.Y.C. v. Floyd*, 8th Dist. Cuyahoga No. 109602, 2020-Ohio-5189.

{¶ 3} It must also be noted that this court will not issue an extraordinary writ in order to correct any error associated with the calculation of jail-time credit. Any error associated with the calculation of jail-time credit must be addressed through a direct appeal. *State ex rel. Sullivan v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 112284, 2023-Ohio-318; *State ex rel. Brookins v. Court of Common Pleas Cuyahoga Cty.*, 8th Dist. Cuyahoga No. 76135, 1999 Ohio App. LEXIS 2170 (May 13, 1999); *State ex rel. Britton v. Judge Foley-Jones*, 8th Dist. Cuyahoga No. 73646, 1998 Ohio App. LEXIS 856 (Mar. 5, 1998).

{¶ 4} However, procedendo lies with regard to Taylor’s request for a ruling with regard to the pending “motion for an order for the clerk to return defendant’s property.” Although Judge Calabrese issued a nunc pro tunc journal entry and a separate judgment entry that waived court costs and fines, there has been no ruling issued with regard to the “motion for an order for the clerk to return defendant’s property,” that is premised upon the return of \$476.00 collected by the Clerk of Courts of Cuyahoga County for court costs and fines. Thus, Taylor is entitled to a ruling with regard to his pending “motion for an order for the clerk to return defendant’s property,” filed on July 9, 2019. *State ex rel. M.D. v. Kelsey*, 168 Ohio St.3d 679, 2022-Ohio-2556, 200 N.E.3d 1114; *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564; *Gray v. Miday*, 8th Dist. Cuyahoga No. 110646, 2021-Ohio-4138. Within 30 days of the date of this judgment, Judge Calabrese is to render a ruling with regard to Taylor’s pending “motion for an order for the clerk to return defendant’s property.”

{¶ 5} Accordingly, we deny in part and grant in part, Judge Calabrese’s motion for summary judgment. Costs to Judge Calabrese; 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).

{¶ 6} Writ denied in part and granted in part.

EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
EILEEN T. GALLAGHER, J., CONCUR