

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO EX REL.,	:	
ESTEPHEN L. CASTELLON,	:	
	:	
Relator,	:	No. 112967
	:	
v.	:	
	:	
JUDGE SHANNON M. GALLAGHER,	:	
	:	
Respondent.	:	

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT:** WRIT DISMISSED  
**DATED:** August 22, 2023

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Writ of Procedendo  
Motion No. 566418  
Order No. 566865

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***Appearances:***

Estephen L. Castellon, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Matthew D. Greenwell, Assistant Prosecuting Attorney, *for respondent*.

KATHLEEN ANN KEOUGH, P.J.:

{¶ 1} Relator, Estephen L. Castellon, seeks a writ of procedendo directing respondent, Judge Shannon M. Gallagher, to rule on a motion to correct jail-time credit that Castellon alleged he filed in an underlying case on November 29, 2022.

Respondent has entered a ruling on the motion. Therefore, Castellon's request for writ of procedendo is moot and the complaint is dismissed.

## **I. Background**

{¶ 2} On July 13, 2023, Castellon filed the instant complaint for writ of procedendo. There, he claimed that in *State v. Castellon*, Cuyahoga C.P. No. CR-16-610907, he filed a motion to correct jail-time credit on November 29, 2022. In the motion, Castellon alleged that he was entitled to 15 more days of credit than he was awarded. He alleged that at the time the complaint was filed, respondent had not issued a ruling on the motion and it was pending for more than 120 days.

{¶ 3} On July 27, 2023, respondent filed a motion to dismiss. There, she alleged that a ruling was journalized on July 26, 2023, granting Castellon a total of 407 days of credit. Respondent argued that as a result of the ruling on Castellon's motion, the present action was rendered moot and should be dismissed. Respondent attached a certified copy of the July 26, 2023 journal entry granting Castellon's motion for jail-time credit.

{¶ 4} On August 11, 2023, Castellon filed a brief in opposition to respondent's motion to dismiss. There he alleged that the action was not moot because respondent did not direct the clerk to serve the judgment on interested parties.

## II. Law and Analysis

{¶ 5} A writ of procedendo is an order to a court of inferior jurisdiction to proceed to judgment. *State ex rel. Davey v. Owen*, 133 Ohio St. 96, 106, 12 N.E.2d 144 (1937). To be entitled to such an order, relators must show that they have a clear legal right to judgment, the respondent has a clear legal duty to proceed to judgment, and they have no other adequate remedy in the ordinary course of the law. *McDougald v. Kuhn*, 162 Ohio St.3d 619, 2020-Ohio-4924, 166 N.E.3d 1163, ¶ 11, citing *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 2013-Ohio-1762, 988 N.E.2d 564, ¶ 7. Once a respondent proceeds to judgment, there is nothing more for the court to order and the action becomes moot. *State ex rel. Poulton v. Cottrill*, 147 Ohio St.3d 402, 2016-Ohio-5789, 66 N.E.3d 716, ¶ 1-2.

{¶ 6} Generally, a court may not rely on documents outside the four corners of the complaint when deciding a motion to dismiss under Civ.R. 12(B)(6). However, a court may consider evidence and events that causes a case to become moot — even extrinsic evidence outside of the record. *State ex rel. Williams v. Croce*, 153 Ohio St.3d 348, 2018-Ohio-2703, 106 N.E.3d 55, ¶ 7, quoting *State ex rel. Hilltop Basic Res. v. Cincinnati*, 118 Ohio St.3d 131, 2008-Ohio-1966, 886 N.E.2d 839, ¶ 15, quoting *State ex rel. Cincinnati Enquirer v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶ 8.

{¶ 7} Here, Castellon has received a ruling on his motion to correct jail-time credit. A certified copy of the journal entry deciding the motion was attached to

respondent's motion to dismiss. He has received all the relief to which he is entitled. Therefore, the present action is moot.

**{¶ 8}** Castellon argues the action is not moot because respondent has failed to direct the clerk to “issue service upon interest parties, namely Relator and the Bureau of Sentence Computation (Orient, Ohio).” However, Castellon does not offer any support that the respondent has a duty to do so. Crim.R. 32(C) does not require a judge to direct service of a judgment in a criminal case. *State ex rel. Daniels v. Fuerst*, 8th Dist. Cuyahoga No. 72192, Motion No. 83343, 1997 Ohio App. LEXIS 2360, 3 (May 29, 1997). Such a judgment is effective on filing.

**{¶ 9}** Castellon may be referring to Civ.R. 58, which requires the court to direct service of a judgment in a civil action. This rule provides:

When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment upon the journal, the clerk shall serve the parties in a manner prescribed by Civ.R. 58(B) and note the service in the appearance docket.

Civ.R. 58(B).

**{¶ 10}** Castellon does not offer any authority that this rule applies to the motion filed in his underlying criminal case, and this court has held that it does not apply in similar situations. *Perry v. Villanueva*, 8th Dist. Cuyahoga No. 104630, 2016-Ohio-5938, ¶ 12; *State ex rel. Ford v. Adm. Judge of Cuyahoga Cty. Court of Common Pleas*, 8th Dist. Cuyahoga No. 100053, 2013-Ohio-4197, ¶ 6, citing, e.g.,

*Fuerst*. Therefore, respondent has provided Castellon with all the relief this court could afford him in this action, rendering his claim for relief in procedendo moot.

{¶ 11} Respondent's motion to dismiss is granted. Castellon's complaint for writ of procedendo is dismissed as moot. Costs to respondent; costs waived. The clerk is directed to serve on the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶ 12} Complaint dismissed.

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KATHLEEN ANN KEOUGH, PRESIDING JUDGE

MICHELLE J. SHEEHAN, J., and  
EILEEN T. GALLAGHER, J., CONCUR



