

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

THE STATE OF OHIO IN THE  
RELATION OF RICHARD C.  
WILBERGER,

Relator,

v.

CUYAHOGA COUNTY COURT OF  
COMMON PLEAS,

Respondent.

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No. 115031

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT:** WRIT DENIED

**DATED:** May 14, 2025

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Writ of Procedendo  
Order No. 584377  
Motion Nos. 583721 and 583932

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***Appearances:***

Richard C. Wilberger, *pro se*.

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

MARY J. BOYLE, P.J.:

{¶ 1} Richard C. Wilberger, the relator, has filed a complaint for a writ of  
procedendo. Wilberger seeks an order from this court that compels Judge Joy

Kennedy, the respondent, to render a ruling with regard to a motion for jail-time credit, filed September 21, 2018, in *State v. Wilberger*, Cuyahoga C.P. No. CR-16-602643-A.<sup>1</sup> Judge Kennedy has filed a motion for summary judgment that is granted.

**{¶ 2}** Attached to the motion for summary judgment is a copy of a judgment entry, journalized April 22, 2025, which demonstrates that Judge Kennedy has granted Wilberger's motion for jail-time credit in the amount of 121 days. Relief is unwarranted because the request for a writ of procedendo is moot. Procedendo will not compel the performance of a duty that has already been performed. *State ex rel. Ames v. Pokorny*, 2021-Ohio-2070; *Thompson v. Donnelly*, 2018-Ohio-4073; *State ex rel. S.Y.C. v. Floyd*, 2020-Ohio-5189 (8th Dist.). See also *State ex rel. Williams v. Croce*, 2018-Ohio-2703; *State ex rel. Fontanella v. Kontos*, 2008-Ohio-1431.

**{¶ 3}** Accordingly, we grant Judge Kennedy'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).

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<sup>1</sup> Pursuant to Civ.R. 25(D)(1), Judge Joy Kennedy is substituted for Judge Shirley Strickland-Saffold who was originally assigned to *State v. Wilberger*, Cuyahoga C.P. No. CR-16-602643-A, and has since retired from the Cuyahoga County Court of Common Pleas.

{¶ 4} Writ denied.

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MARY J. BOYLE, PRESIDING JUDGE

ANITA LASTER MAYS, J., and  
DEENA R. CALABRESE, J., CONCUR