

IN THE SUPREME COURT OF OHIO

CHRISTOPHER DUFFIN,

Case No. 2011-1107

RELATOR,

-vs-

ORIGINAL ACTION IN
PROCEDENDO

JUDGE BRIDGET MCCAFFERTY,

RESPONDENT.

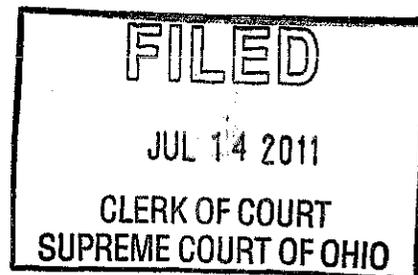
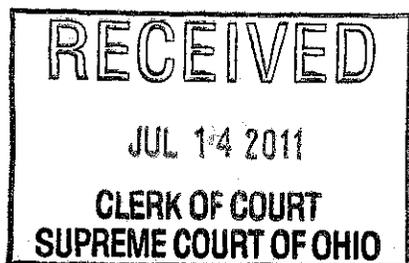
RESPONDENT'S MOTION TO DISMISS RELATOR'S
PETITION FOR WRIT OF PROCEDENDO

COUNSEL FOR RELATOR, PRO SE

COUNSEL FOR RESPONDENT

CHRISTOPHER DUFFIN (# 593694)
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Cuyahoga County Prosecutor
BY: James E. Moss
(#0061958)
Assistant Prosecuting Attorney
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STATEMENT OF THE CASE

On October 19, 2010, Relator Christopher Duffin pled guilty to one count of drug possession in violation of R.C. 2925.11(A). On November 19, 2010, Relator was sentenced to eight months in prison. On June 27, 2011, Relator filed a complaint for writ of procedendo (“Complaint”) asking this Court to compel respondent Judge Michael Astrab¹ to rule on a motion for additional jail-time credit he filed on June 7, 2011 in Cuyahoga County Court of Common Pleas case number CR-10-541727-A.

LAW AND ARGUMENT

On June 27, 2011, Relator filed a complaint for writ of procedendo asking this Court to compel respondent Judge Michael Astrab to rule on a motion for jail-time credit he filed on June 7, 2011 in Cuyahoga County Court of Common Pleas case numbers CR-10-541727. On June 30, 2011, respondent Judge Astrab issued a journal entry granting Relator’s motion for additional jail-time credit he filed on June 7, 2011 as evidenced by the “Notice of Judicial Action” filed contemporaneously with this Motion².

Because respondent Judge Astrab has ruled on Relator’s motion for jail-time credit he filed in Cuyahoga County Court of Common Pleas case number CR-10-541727, Relator’s Complaint is moot. *State ex rel. Fontanella v. Kantos*, 117 Ohio St.3d 514, 2008-Ohio-1431, ¶ 6 (“Neither procedendo nor mandamus will compel the performance of a duty that has already been performed.”).

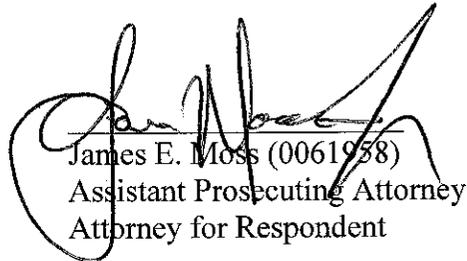
¹ Relator incorrectly named Judge Bridget McCafferty as the respondent in this action. Judge Michael Astrab is the successor to Judge McCafferty.

² Said “Notice of Judicial Action” appends Judge Astrab’s June 30, 2011 journal entry in case CR-10-541727 granting Relator’s motion for additional days of jail-time credit he filed on June 7, 2011.

CONCLUSION

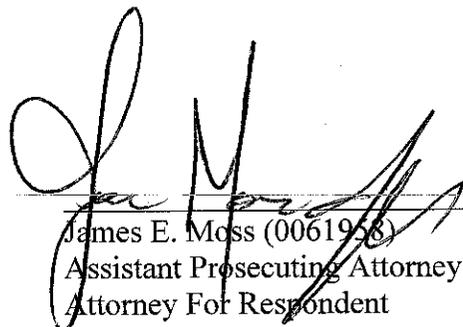
For the foregoing reasons, respondent Judge Astrab respectfully requests that this Court grant Respondent's Motion To Dismiss Relator's Petition For Writ Of Procedendo.

Respectfully submitted,


James E. Moss (0061958)
Assistant Prosecuting Attorney
Attorney for Respondent

SERVICE

A copy of the foregoing Respondent's Motion To Dismiss Relator's Petition For Writ Of Procedendo was mailed this 13th day of July, 2011, by regular U.S. Mail to Christopher Duffin, Pro Se, Inmate # 593694, at Belmont Correctional Institution, P.O. Box 540, 68518 Bannock Road, St. Clairsville, Ohio 43950.


James E. Moss (0061958)
Assistant Prosecuting Attorney
Attorney For Respondent