

ORIGINAL

IN THE SUPREME COURT OF OHIO

JUDGE MICHAEL P. DONNELLY
CUYAHOGA CO. COMMON PLEAS COURT

Case No.: CR-10536637

Respondent

11-1357

Vs.

BOBBY THOMAS JR.

Relator

**REQUEST FOR ISSUANCE OF WRIT OF PROCENDENDO BY BOBBY THOMAS JR.
(COMPLAINT)**

By:

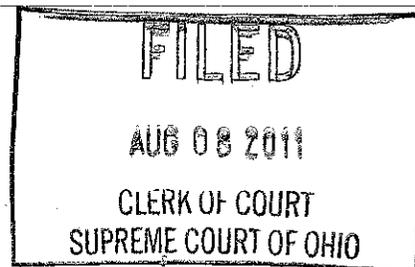
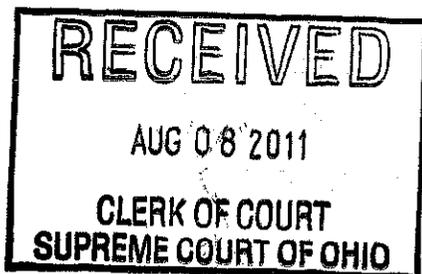
**RELATOR
BOBBY THOMAS JR. #591-563
BECL, P.O. BOX 540
ST. CLAIRSVILLE, OHIO, 43950
COUNSEL FOR RELATOR, PRO SE**

RESPONDENT

**JUDGE MICHAEL P. DONNELLY
19A JUSTICE CNTR.
1200 ONTARIO ST.
CLEVELAND, OH, 44113**

CUYAHOGA COUNTY PROSECUTOR

**1200 ONTARIO ST.
CLEVELAND, OH, 44113
COUNSEL FOR RESPONDENT, STATE OF OHIO
CUYAHOGA COMMON PLEAS JUDGE DONNELLY**



IN THE SUPREME COURT OF OHIO

JUDGE MICHAEL P. DONNELLY
CUYAHOGA CO. COMMON PLEAS COURT

Case No.: CR-10536637

Respondent

Vs.

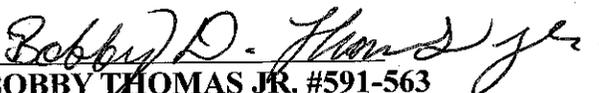
BOBBY THOMAS JR.

Relator

**REQUEST FOR ISSUANCE OF WRIT OF PROCENDENDO BY BOBBY THOMAS JR.
(COMPLAINT)**

Now comes Bobby Thomas Jr., Relator Pro Se, and hereby Moves this Honorable Court to issue a Writ of Procendendo, directing the Respondent to rule upon the Relator's Motion for Jail Time Credit. Said Motion was filed on the 26th day of March, 2011. Relator also filed a Motion for Jail Time Credit on the 26th day of July, 2011, which was also never ruled upon. Relator submits his reasons for making this request in the Memorandum in Support attached hereto.

Respectfully Submitted,


BOBBY THOMAS JR. #591-563
BECL, P.O. BOX 540
ST. CLAIRSVILLE, OH, 43950

IN THE SUPREME COURT OF OHIO

JUDGE MICHAEL P. DONNELLY CUYAHOGA : Case No.: CR-10536637
COUNTY COMMON PLEAS COURT

Respondent :

Vs. :

BOBBY THOMAS JR. :

Relator :

AFFIDAVIT OF BOBBY THOMAS JR.

I, Bobby Thomas Jr., do hereby solemnly swear that I have filed no Civil Actions of any kind in any Court in the previous five years.

Respectfully Submitted,

Bobby D. Thomas Jr.
BOBBY THOMAS JR. #591-563
BECL P.O. BOX 540
ST. CLAIRSVILLE, OH, 43950

Sworn to and subscribed in my presence on this the 3 day of August, 2011.

Jay Meager
NOTARY PUBLIC



Jay Meager
Notary Public
In and for the State of Ohio
My Commission Expires
12-19-12

IN THE SUPREME COURT OF OHIO

JUDGE MICHAEL P. DONNELLY CUYAHOGA : Case No.: CR-10536637
COUNTY COMMON PLEAS COURT

Respondent :

Vs. :

BOBBY THOMAS JR. :

Relator :

AFFIDAVIT OF BOBBY THOMAS JR.

I, Bobby Thomas Jr., do hereby solemnly swear that the facts contained within this Motion for Writ of Procendendo (Complaint) are true and correct to the best of my knowledge and belief.

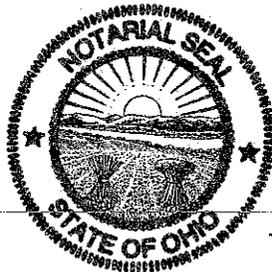
I have never received a response of any kind, from State or from the Respondent, in regards to either of my Motions for Jail Time Credit, which were filed with the Clerk of Courts on March 26, 2011 and July 26, 2011. I feel my Due Process Rights have been violated as a result.

Respectfully Submitted,

Bobby D. Thomas Jr.
BOBBY THOMAS JR. #591-563
BECL, P.O. BOX 540
ST. CLAIRSVILLE, OH, 43950

Sworn to and subscribed in my presence on this the 3 day of August, 2011.

Jay Meager
NOTARY PUBLIC



Jay Meager
Notary Public
In and for the State of Ohio
My Commission Expires
12.19.12

MEMORANDUM IN SUPPORT

On both the 3rd day of March, 2011, and the 26th day of July, 2011, Relator filed, with the Clerk of Cuyahoga County Common Pleas Court, Motions for Jail Time Credit. Relator then waited for a response to these Motions, but never received any, from the Court or otherwise.

To date, Relator has still never received any response to his Motions for Jail Time Credit. Relator has a clear legal right to receive a judgment on these Motions, and has no other adequate remedy at law to receive said judgment other than to file this request for Writ of Procendendo. Both the Court and the State failing to respond has certainly and unnecessarily delayed this proceeding and interfered with the ordinary Court procedure and process.

STATE EX. REL. PARKS V. OLIVITO, 7th Dist., Aug. 21, 2008, ¶2: "In order to be entitled to a writ of procendendo, a Relator must establish a clear legal right to require a respondent to proceed, a clear legal duty on the part of the respondent to proceed, and the lack of an adequate remedy in the ordinary course of law. *STATE EX REL SHERRILLS V. CUYAHOGA CTY. COURT OF COMMON PLEAS*, 72 Ohio St.3d 461 462, 1995-Ohio-0026. A writ of procendendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *STATE EX REL MILEY V. PARROT*, 77 Ohio St.3d 64, 65, 1996-Ohio-0350. The writ of procendendo may not interfere with ordinary court procedures or process. *STATE EX REL RATLIFF V. MARSHALL* (1972) 30 Ohio st.2d 101, 102. The writ will not in any case attempt to control the inferior court as to what judgment shall be entered. *STATE EX REL NIEDERLEHNEN V. MACK* (1932) 125 Ohio St. 559, 564, ***[*2, ¶5]: ***A litigant should be given the courtesy of a judgment entry expressing the trial court's belief that it does not have jurisdiction to address a particular issue so that the litigant can challenge that entry on appeal, if the litigant chooses to do so. A trial court cannot simply refuse to act."

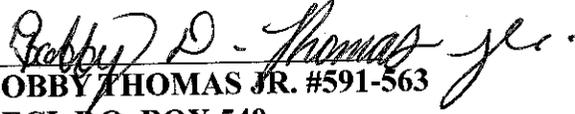
Relator's current out date is currently set at August 25th, 2011. If he received the jail time credit requested in his Motions-six days from North Homestead and six days from the Cuyahoga County Jail-then his new out date would be July 12th, 2011. Relator has no other remedy to receive the relief requested by July 12th, 2011, other than to file this Procendendo. Relator has a right to be given the courtesy of a judgment on this Motion instead of the Judge just remaining silent. His due process rights are being violated as a result of Judge Donnely's silence in this matter.

CONCLUSION

Relator hereby respectfully moves this Honorable Court to issue a Writ of Procendendo in this

matter so that he can continue in his legal process. Any further delay in these matters would be a violation of Relator's due process rights. Relator thanks this Honorable Court for its time in this matter.

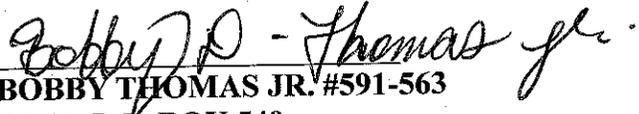
Respectfully Submitted,


BOBBY THOMAS JR. #591-563
BECL, P.O. BOX 540
ST. CLAIRSVILLE, OH, 43950

CERTIFICATE OF SERVICE

I, Bobby Thomas Jr., do hereby Certify that, on this the 3rd day of Aug, I delivered, to a Be.C.I. Employee, a true and correct copy of the foregoing **REQUEST FOR ISSUANCE OF WRIT OF PROCENDENDO BY BOBBY THOMAS JR. (COMPLAINT)**, addressed to the Cuyahoga Co. Prosecutor, so that the Be.C.I. Employee can deliver said document to the Be.C.I. Cashier's Office, so that the Be.C.I. Cashier can verify that I have money for postage on my books and then deliver said document to the Be.C.I. Mailroom, so that it may be mailed by regular U.S. Mail, a process which is required by Be.C.I. in order for an inmate to mail legal documents which will not fit in standard embossed envelopes, and which can take three or four days or more.

Respectfully Submitted,


BOBBY THOMAS JR. #591-563
BECL, P.O. BOX 540
ST. CLAIRSVILLE, OH, 43950

**DOCUMENT NOT SCANNED
PURSUANT TO SUPERINTENDENCE
RULE 45**