

IN THE SUPREME COURT OF OHIO

BOBBY THOMAS JR.,

RELATOR,

-vs-

JUDGE MICHAEL DONNELLY,

RESPONDENT.

Case No. 2011-1357

ORIGINAL ACTION IN
PROCEDENDO

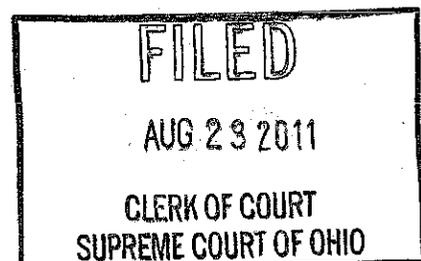
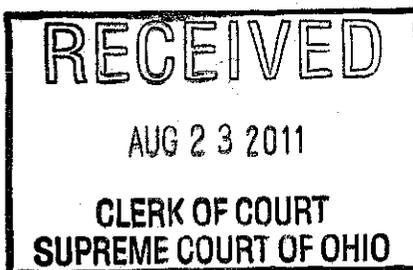
RESPONDENT'S MOTION TO DISMISS RELATOR'S
PETITION FOR WRIT OF PROCEDENDO

COUNSEL FOR RELATOR, PRO SE

BOBBY THOMAS JR. (# 591563)
c/o Belmont Correctional Institution
P.O. Box 540
68518 Bannock Road
St. Clairsville, Ohio 43950

COUNSEL FOR RESPONDENT

WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: James E. Moss
(#0061958)
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7800



STATEMENT OF THE CASE

On July 26, 2010, Relator pled guilty to one count of having a weapon while under a disability in violation of R.C. 2923.13(A)(2) with forfeiture specification under R.C. 2941.1417. On August 26, 2010, Relator was sentenced to one year in prison. On August 8, 2011, Relator filed a petition for writ of procedendo (“Petition”) asking this Court to compel respondent Judge Michael Donnelly to rule on a motion for jail-time credit he filed on February 15, 2011 in Cuyahoga County Court of Common Pleas case number CR-10-536637-C.¹

LAW AND ARGUMENT

On August 8, 2011, Relator filed a Petition asking this Court to compel respondent Judge Michael Donnelly to rule on a motion for jail-time credit he filed on February 15, 2011 in Cuyahoga County Court of Common Pleas case number CR-10-536637-C. On August 22, 2011, respondent Judge Donnelly issued a journal entry granting Relator’s motion for additional jail-time credit he filed on February 15, 2011 as evidenced by the “Notice of Judicial Action” filed contemporaneously with this Motion².

Because respondent Judge Donnelly has ruled on Relator’s motion for jail-time credit he filed in Cuyahoga County Court of Common Pleas case number CR-10-536637-C, Relator’s Petition 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.”).

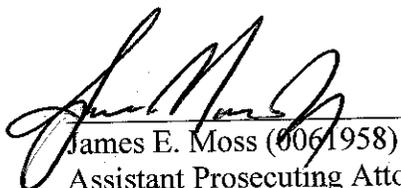
¹ Relator filed his motion for jail-time credit on February 15, 2011 in Cuyahoga County Court of Common Pleas case number CR-10-536637-C. He incorrectly claims he filed motions for jail-time credit on March 26, 2011 and July 26, 2011.

² Said “Notice of Judicial Action” appends Judge Donnelly’s August 22, 2011 journal entry in case CR-10-536637-C granting Relator’s motion for additional days of jail-time credit he filed on February 15, 2011.

CONCLUSION

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

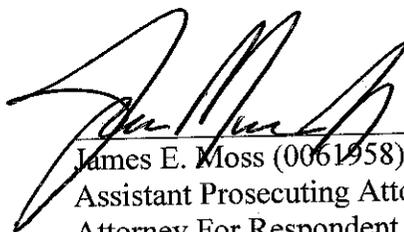
Respectfully submitted,



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 22nd day of July, 2011, by regular U.S. Mail to Bobby Thomas Jr., Pro Se, Inmate # 591563, 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