

STATE OF OHIO, COLUMBIANA COUNTY

SEVENTH DISTRICT

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Writ of Procedendo

Dismissed

Robert J. Smith, Pro-se
5700 ½ State Route 225
Wayland, Ohio 44285

Robert L. Herron
Prosecutor
Krista R. Peddicord
Assistant Prosecutor
105 S. Market St.
Lisbon, Ohio 44432

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Assistant Prosecutor
105 S. Market St.
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Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: February 27, 2014

{¶1} Relator Robert J. Smith has filed a pro se petition for a writ of procedendo asking this court to compel respondent Columbiana County Common Pleas Court Judge C. Ashley Pike to issue a new sentencing entry to correct an alleged illegal sentence.

{¶2} Smith alleges that in 2007 he was sentenced in the Columbiana County Common Pleas Court to 5-years post-release control and a ten-year driver's license suspension in case no. 2005CR00358. He argues that according to Ohio statutory and case law post-release control should have been only for 3 years and that the driver's license suspension should have been a mandatory loss of driver's license. He filed in the sentencing court a motion to correct the alleged illegal sentence, but the court denied the requested relief.

{¶3} The criteria for relief in procedendo are well-established. The relator must demonstrate: (1) a clear legal right to proceed in the underlying matter; and (2) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Charvat v. Frye*, 114 Ohio St.3d 76, 2007-Ohio-2882, 868 N.E.2d 270, ¶ 13. A writ of procedendo is appropriate when "a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment." *State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 532, 705 N.E.2d 1227 (1999).

{¶4} Smith's petition must be dismissed. Respondent has not refused to render a judgment nor has it unnecessarily delayed proceeding to judgment. Smith filed a motion to correct the alleged illegal sentence and respondent ruled upon that motion. Smith was just dissatisfied with how respondent ruled upon that motion. Smith has not identified any motions that respondent has yet to rule upon.

{¶5} Additionally, relief in procedendo is unavailable if there is an adequate remedy in the ordinary course of law. *State ex rel. Sevayega v. McMonagle*, 122 Ohio St.3d 54, 2009-Ohio-2367, 907 N.E.2d 1180, ¶ 1. To the extent Smith contests the propriety of the ruling he received on his motion to correct sentence, he had an adequate remedy in the ordinary course of law by way of appeal. See *id.*

{¶6} For the foregoing reasons, Smith's petition for writ of procedendo is

dismissed. Costs assessed to Smith.

{¶7} Final order. Clerk to serve notice as provided by the civil rules.

Donofrio, J. concurs.

Waite, J. concurs.

DeGenaro, P.J. concurs.