

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel.	:	
Andre R. Banks,	:	
	:	
Relator,	:	
	:	
v.	:	No. 10AP-914
	:	
The Court of Common Pleas for	:	(REGULAR CALENDAR)
Franklin County Ohio, Honorable	:	
Judge Julie Lynch,	:	
	:	
Respondent.	:	

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D E C I S I O N

Rendered on September 30, 2011

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*Andre R. Banks*, pro se.

*Ron O'Brien*, Prosecuting Attorney, and *R. Matthew Colon*,  
for respondent.

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IN PROCEDENDO  
ON OBJECTION TO THE MAGISTRATE'S DECISION

KLATT, J.

{¶1} Relator, Andre R. Banks, commenced this original action in procedendo seeking an order compelling respondent, Judge Julie Lynch, a Judge of the Franklin County Court of Common Pleas, to rule upon relator's petition for postconviction relief filed January 14, 2010, in case No. 08CR-5359. Respondent filed a motion for summary judgment pointing out that she denied relator's postconviction petition on October 14,

2010. Therefore, respondent argued that she has performed the act which relator sought to compel. In response to that motion, relator acknowledged that respondent ruled on his petition. However, relator now contends that he seeks to compel respondent to make findings of fact and conclusions of law in connection with that ruling.

{¶2} Pursuant to Civ.R. 53 and Loc.R. 12(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate determined that relator has an adequate remedy at law by way of a direct appeal to challenge the denial of his postconviction petition as well as the alleged absence of findings of fact and conclusions of law in respondent's decision. Therefore, the magistrate has recommended that we deny relator's request for a writ of procedendo, and grant summary judgment in favor of respondent.

{¶3} Relator has filed an objection to the magistrate's decision. However, relator merely reiterates that he seeks to compel respondent to issue findings of fact and conclusions of law in connection with the denial of his postconviction petition. Relator ignores the basis for the magistrate's recommendation.

{¶4} Following independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Relator has an adequate remedy at law to challenge the alleged deficiencies in respondent's ruling—an appeal. In fact, relator states in his objection to the magistrate's decision that he has appealed the denial of his postconviction petition. Therefore, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In

accordance with the magistrate's decision, we grant summary judgment in favor of respondent and deny relator's request for a writ of procedendo.

*Objection overruled; writ of procedendo denied.*

CONNOR and DORRIAN, JJ., concur.

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**APPENDIX**

IN THE COURT OF APPEALS OF OHIO

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State of Ohio ex rel.	:	
Andre R. Banks,	:	
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Relator,	:	
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v.	:	No. 10AP-914
	:	
The Court of Common Pleas for	:	(REGULAR CALENDAR)
Franklin County Ohio, Honorable	:	
Judge Julie Lynch,	:	
	:	
Respondent.	:	
	:	

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MAGISTRATE'S DECISION

Rendered on March 30, 2011

*Andre R. Banks, pro se.*

*Ron O'Brien, Prosecuting Attorney, and R. Matthew Colon,  
for respondent.*

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IN PROCEDENDO  
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

{¶5} In this original action, relator, Andre R. Banks, an inmate of the Chillicothe Correctional Institution, requests a writ of procedendo ordering respondent, the Honorable Julie Lynch, a judge of the Franklin County Court of Common Pleas, to rule upon relator's petition for post-conviction relief filed January 14, 2010 in the Franklin County Court of Common Pleas in case No. 08CR-5359.

Findings of Fact:

{¶6} 1. On September 27, 2010, relator filed this procedendo action against respondent.

{¶7} 2. According to the complaint, on January 14, 2010, relator filed his petition for post-conviction relief in the common pleas court in case No. 08CR-5359.

{¶8} 3. According to the complaint, respondent has not ruled on the petition.

{¶9} 4. For relief in this action, relator requests a writ of procedendo ordering respondent to rule upon his petition.

{¶10} 5. On October 20, 2010, respondent filed a motion to dismiss. Attached to the motion as an exhibit is a copy of respondent's "Decision and Entry" filed in the common pleas court on October 14, 2010 in case No. 08CR-5359. The entry denies relator's January 14, 2010 petition.

{¶11} 6. On October 27, 2010, the magistrate issued an order converting respondent's October 20, 2010 motion to dismiss to one for summary judgment.

{¶12} 7. Also on October 27, 2010, the magistrate issued notice that respondent's motion for summary judgment is set for submission to the magistrate on November 22, 2010.

{¶13} 8. On November 10, 2010, relator filed his "reply." In his "reply," relator acknowledges that respondent has ruled upon his petition. However, the "reply" states: "Relator requires Findings of Fact and Conclusions of Law in order for this matter to be a Final Appealable Order."

Conclusions of Law:

{¶14} It is the magistrate's decision that this court grant respondent's motion for summary judgment.

{¶15} Summary judgment is appropriate when the movant demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, said party being entitled to have the evidence construed most strongly in his favor. *Turner v. Turner* (1993), 67 Ohio St.3d 337, 339-40; *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 146; *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 115.

{¶16} Under R.C. 2953.21(C), findings of fact and conclusions of law are mandatory if the trial court dismisses a petition for post-conviction relief. *State ex rel. Konoff v. Moon*, 79 Ohio St.3d 211, 212, 1997-Ohio-398. Mandamus will lie to compel a trial court to issue findings of fact and conclusions of law when it dismisses a petition for post-conviction relief. *Id.*

{¶17} However, neither a writ of procedendo nor a writ of mandamus will issue if an adequate remedy at law exists in the ordinary course of law. *State ex rel. Reynolds v. Basinger*, 99 Ohio St.3d 303, 2003-Ohio-3631.

{¶18} Here, relator had a remedy by way of a direct appeal of the dismissal of his petition. See *State ex rel. Hazel v. Bender*, 10th Dist. No. 09AP-288, 2009-Ohio-6326.

{¶19} Accordingly, for all the above reasons, it is the magistrate's decision that this court grant respondent's motion for summary judgment.

*/s/ Kenneth W. Macke*  
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KENNETH W. MACKE  
MAGISTRATE

**NOTICE TO THE PARTIES**

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).