

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, et al.	:	JUDGES:
VINCENT CURRY	:	W. Scott Gwin, P.J.
	:	John W. Wise, J.
	:	Julie A. Edwards, J.
Relator	:	
	:	Case No. 2009-CA-0110
-vs-	:	
	:	
	:	<u>OPINION</u>
JUDGE JAMES HENSON	:	
Respondent	:	

CHARACTER OF PROCEEDING: Criminal Appeal from Richland County Court of Common Pleas Case No. 2006-CR-1091 H

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: December 15, 2009

APPEARANCES:

For Relator

For Respondent

VINCENT CURRY
North Central Corr. Institute
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P.O. Box 1812
Marion, Ohio 43301-1812

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Edwards, J.

{¶1} On September 11, 2009, Relator, Vincent Curry, filed a Petition for Writ of Mandamus and/or Writ of Procedendo. Relator requests Respondent Judge James Henson be ordered to rule on a motion filed by Relator on April 14, 2009. Respondent Henson issued a ruling on the motion on September 15, 2009. Respondent has filed a motion to dismiss the instant Petition because his ruling upon the motion has made the Petition moot.

{¶2} To be entitled to the issuance of a writ of mandamus, the Relator must demonstrate: (1) a clear legal right to the relief prayed for; (2) a clear legal duty on the respondent's part to perform the act; and, (3) that there exists no plain and adequate remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27, 661 N.E.2d 180; *State ex rel. Harris v. Rhodes* (1978), 5 Ohio St.2d 41, 324 N.E.2d 641, citing *State ex rel. National City Bank v. Bd of Education* (1977) 520 Ohio St.2d 81, 369 N.E.2d 1200.

{¶3} The Supreme Court held in *Madsen*, "Mandamus will not issue to compel an act that has already been performed." *State ex rel. Scruggs v. Sadler*, 102 Ohio St.3d 160, 2004-Ohio-2054, 807 N.E.2d 357, ¶ 5. *State ex rel. Madsen v. Jones* (2005), 106 Ohio St.3d 178, *179, 833 N.E.2d 291, **292.

{¶4} Because the relief sought has already been rendered by the trial court, Relator has no clear right to the relief prayed for, and the Respondent has no clear legal duty to perform an act which it has already performed. *State ex rel. Lewis v. Boggins*, 2007 WL 4395630 (Ohio App. 5 Dist.). Therefore, we find the petition for writ of mandamus must be denied.

{¶5} To be entitled to a writ of procedendo, “a relator must establish a clear legal right to require the court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an adequate remedy in the ordinary course of law.” *Miley*, supra, at 65, citing *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas* (1995), 72 Ohio St.3d 461, 462. The Supreme Court has noted, “The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. It does not in any case attempt to control the inferior court as to what that judgment should be.” *State ex rel. Davey v. Owen*, 133 Ohio St. 96, *106, 12 N.E.2d 144, * *149 (1937).

{¶6} Because Respondent Henson has issued a ruling on Appellant’s motion, the request for a writ of procedendo has become moot. No issue remains upon which Respondent Henson is required to proceed, therefore, the petition for the issuance of a writ of procedendo is denied.

{¶7} For these reasons, Respondent's Motion to Dismiss is granted.

{¶8} WRIT DISMISSED.

{¶9} IT IS SO ORDERED.

By: Edwards, J.

Gwin, P.J. and

Wise, J. concur

s/Julie A. Edwards

s/W. Scott Gwin

s/John W. Wise

JUDGES

JAE/as1106

