

[Cite as *State ex rel. Brooks v. Cuyahoga Cty. Court of Common Pleas Judge*, 2009-Ohio-2872.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93265**

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**STATE OF OHIO, EX REL.,  
KENNETH BROOKS**

RELATOR

vs.

**CUYAHOGA COUNTY COURT OF  
COMMON PLEAS JUDGE (JOHN DOE)**

RESPONDENT

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**JUDGMENT:  
WRIT DISMISSED**

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WRIT OF PROCEDENDO  
MOTION NO. 422138  
ORDER NO. 422987

**RELEASE DATE:** June 16, 2009

**FOR RELATOR:**

Kenneth Brooks, pro se  
Inmate No. 356-595  
Noble Correctional Inst  
15708 McConnellsville Road  
Caldwell, Ohio 43724

**ATTORNEYS FOR RESPONDENT:**

William D. Mason  
Cuyahoga County Prosecutor

By: James Moss  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

CHRISTINE T. MCMONAGLE, J.:

{¶ 1} On May 7, 2009, the relator, Kenneth Brooks, commenced this procedendo action against the respondent, Cuyahoga County Common Pleas Judge (John Doe), to compel the court to rule on a “motion for jail time credit” which he filed in the underlying case, *State v. Brooks*, Cuyahoga County Common Pleas Court Case No. CR-358425, in February 2009. A review of the docket in the underlying case shows that on February 25, 2009, he filed “Defendant’s motion to correct and/or modification of sentencing judgment entry.” The docket shows that this is the only motion Brooks filed in that month. On May 14, 2009, the respondent, through

the Cuyahoga County Prosecutor, filed a motion for summary judgment. Brooks did not timely file a brief in opposition. For the following reasons, this court grants the respondent's motion for summary judgment and dismisses the application for a writ of procedendo.

{¶ 2} The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. *Yee v. Erie County Sheriff's Department* (1990), 51 Ohio St.3d 43, 553 N.E.2d 1354. Procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Watkins v. Eighth District Court of Appeals*, 82 Ohio St.3d 532, 1998-Ohio-190, 696 N.E.2d 1079. However, the writ will not issue to control what the judgment should be, nor will it issue for the purpose of controlling or interfering with ordinary court procedure. Thus, procedendo will not lie to control the exercise of judicial discretion. Moreover, it will not issue when there is an adequate remedy at law. *State ex rel. Utley v. Abruzzo* (1985), 17 Ohio St.3d 202, 478 N.E.2d 789 and *State ex rel. Hansen v. Reed* (1992), 63 Ohio St.3d 597, 589 N.E.2d 1324.

{¶ 3} Attached to the dispositive motion were certified copies of journal entries filed in the underlying case. The first, file-stamped March 11, 2009, stated: "Defendant's motion, filed 02-25-09, to correct and/or modification of sentencing judgment entry is denied." The second entry, file-stamped April 20, 2009, granted the motion in part. The court noted that Brooks was under a six-month sentence in

Texas on a drug possession case. Thus, he should receive only an additional ten days of jail time credit and not the 176 he was requesting. These journal entries establish that the respondent has fulfilled the required duty, ruling on the outstanding motion. Brooks either has or had an adequate remedy at law through appeal to contest the court's rulings. This action is, therefore, moot. *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 589 N.E.2d 113.

{¶ 4} Additionally, the relator failed to support his complaint with an affidavit "specifying the details of the claim" as required by Local Rule 45(B)(1)(a). *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077 and *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899. The "swear-to-everything" affidavit does not fulfill the requirements of the rule. *State v. Ricardo Leon v. Cuyahoga County Court of Common Pleas*, Cuyahoga App. No. 92826, 2009-Ohio-1612.

{¶ 5} Relator also did not comply with R.C. 2969.25(C) which requires that an inmate file a certified statement from his prison cashier setting forth the balance in his private account for each of the preceding six months. Brooks filed a poverty affidavit, but did not attach a statement from the prison cashier. This also is sufficient reason to dismiss the procedendo, deny indigency status and assess costs against the relator. *State ex rel. Pamer v. Collier*, 108 Ohio St.3d 492, 2006-Ohio-1507, 844 N.E.2d 842 and *State ex rel. Hunter v. Cuyahoga County Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420.

{¶ 6} Accordingly, the court grants the respondent's motion for summary judgment and dismisses the application for a writ of procedendo. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

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CHRISTINE T. MCMONAGLE, JUDGE

SEAN C. GALLAGHER, P.J., and  
LARRY A. JONES, J., CONCUR