

[Cite as *State ex rel. Hoffman v. Eyster*, 2012-Ohio-597.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL. MATTHEW J. HOFFMAN	:	JUDGES:
	:	Patricia A. Delaney, P.J.
	:	William B. Hoffman, J.
	:	Julie A. Edwards, J.
Relator	:	
	:	Case No. 11CA24
-vs-	:	
	:	
	:	<u>OPINION</u>
JUDGE OTHO EYSTER	:	
Respondent	:	

CHARACTER OF PROCEEDING:	Writ of Mandamus and Procedendo
JUDGMENT:	Denied
DATE OF JUDGMENT ENTRY:	February 10, 2012
APPEARANCES:	
For Relator	For Respondent
MATTHEW J. HOFFMAN #A645571 Toledo Correctional Institution 2001 East Central Avenue Toledo, Ohio 43608	NO APPEARANCE

Edwards, J.

{¶1} Relator, Matthew J. Hoffman, has filed a “Petition for Writ of Mandamus and of Procedendo” requesting a writ be issued which would require Respondent to rule on two outstanding motions filed with the trial court.

{¶2} For a writ of mandamus to issue, the relator must have a clear legal right to the relief prayed for, the respondents must be under a clear legal duty to perform the requested act, and relator must have no plain and adequate remedy in the ordinary course of law. *State, ex rel. Berger, v. McMonagle* (1983), 6 Ohio St.3d 28, 6 OBR 50, 451 N.E.2d 225.

{¶3} A writ of procedendo has “the limited purpose of [requiring] a lower court to go forward ‘when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.’ *State ex rel. Miley v. Parrott* (1996), 77 Ohio St.3d 64, 65, 671 N.E.2d 24.” *State ex rel. Lemons v. Kontos* 2009 WL 4756269, 2 (Ohio App. 11 Dist.).

{¶4} The Supreme Court has held, “Neither procedendo nor mandamus will compel the performance of a duty that has already been performed. *State ex rel. Grove v. Nadel* (1998), 84 Ohio St.3d 252, 253, 703 N.E.2d 304, 305.” *State ex rel. Kreps v. Christiansen* (2000), 88 Ohio St.3d 313, 318, 725 N.E.2d 663, 668.

{¶5} Subsequent to the filing of the instant petition, Respondent ruled on the two outstanding motions filed by Relator in the trial court. For this reason, we find the petition has become moot.

{¶6} For this reason, the request for the issuance of a writ of mandamus and/or procedendo is denied.

By: Edwards, J.
Delaney, P.J. and
Hoffman, J. concur

JUDGES

