

COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY

State ex rel. Peterson v. Miday

2026-Ohio-191 · No. No. 115723 · Decided January 16, 2026

SUMMARY

The Eighth District Court of Appeals of Ohio partially dismissed and partially granted a complaint for a writ of procedendo concerning a second and successive petition for postconviction relief. The court held that the request to compel a ruling was moot because the trial court had already ruled, but required compliance with Civ.R. 58(B) notice requirements for judgments addressing the postconviction petition.

CASE DETAILS

COURT	Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
WRITING FOR THE COURT	Mary J. Boyle; Lisa B. Forbes; Eileen T. Gallagher
JURISDICTION	Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
DECIDED	January 16, 2026
DOCKET	No. 115723
DISPOSITION	other
PROCEDURAL POSTURE	Peterson filed an original complaint in procedendo seeking an order compelling the respondent judge to rule on a successive petition for postconviction relief and to comply with Civ.R. 58(B). The respondent moved to dismiss. The appellate court dismissed the procedendo claim as moot but granted relief concerning Civ.R. 58(B).
STANDARD OF REVIEW	The court reviewed the procedendo complaint and the motion to dismiss, determining mootness from the undisputed judgment entry attached to the motion and reviewing the docket to determine compliance with Civ.R. 58(B).
PRECEDENTIAL VALUE	Published Ohio appellate opinion
PARTIES	Damien L. Peterson v. Judge Sherrie M. Miday

TOPICS

- post-conviction relief
- mootness
- motions to dismiss
- appellate procedure
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

post-conviction relief

remedies

QUESTIONS PRESENTED

1. Whether Peterson's request for a writ of procedendo compelling Judge Miday to rule on the successive postconviction petition was moot after the judge issued and journalized a ruling.
2. Whether Civ.R. 58(B)'s notice requirement applies to judgments resolving a petition for postconviction relief and, if so, whether the trial court was required to reissue the relevant judgments with the required clerk-service language.

HOLDINGS

1. The procedendo claim was moot because procedendo cannot compel performance of a duty that has already been performed.
2. Because postconviction relief is a civil proceeding, Civ.R. 58(B) applies to judgments rendered concerning a postconviction-relief petition. Judge Miday was required to reissue the relevant judgments with language directing the clerk to serve all parties with notice of the judgment and its date of entry upon the journal.

KEY QUOTATIONS

“Procedendo will not compel the performance of a duty that has already been performed.”

“Because an action for postconviction relief constitutes a civil proceeding, the notice requirement of Civ.R. 58(B) is applicable to any judgment rendered with regard to a motion for postconviction relief.”

FACTUAL BACKGROUND

Peterson filed a second and successive petition for postconviction relief in the underlying criminal case. Judge Miday later denied the petition in a judgment journalized on December 18, 2025. The appellate court's review of the docket did not show that the trial court had directed the clerk to serve the parties with notice of the judgment and its journalization date as required by Civ.R. 58(B).

PROCEDURAL HISTORY

Peterson filed a second and successive petition for postconviction relief in the Cuyahoga County Court of Common Pleas on December 27, 2024. While the procedendo action was pending, Judge Miday denied the petition and journalized the judgment on December 18, 2025. The appellate court held that the request to compel a ruling was moot, but found that the trial court had not complied with Civ.R. 58(B) and ordered reissuance of the relevant judgments with the required notice-to-clerk language.

DISPOSITION

other

REMAND INSTRUCTIONS

Judge Miday must comply with Civ.R. 58(B) and reissue any judgments that denied or dealt with Peterson's second and successive petition for postconviction relief so that they direct the clerk of courts to serve all parties with notice of the judgment and its date of entry upon the journal. The complaint was dismissed in part and granted in part; costs were waived.

CASES CITED

- State ex rel. Ames v. Pokorny, 2021-Ohio-2070, ¶ 7
- Thompson v. Donnelly, 2018-Ohio-4073, ¶ 5
- State ex rel. S.Y.C. v. Floyd, 2020-Ohio-5189, ¶ 9 (8th Dist.)
- State ex rel. Williams v. Croce, 2018-Ohio-2703, ¶ 7
- State ex rel. Fontanella v. Kontos, 2008-Ohio-1431, ¶ 6
- State v. Nichols, 11 Ohio St.3d 40, 43 (1984)
- State v. Tucker, 2011-Ohio-4092, ¶ 9 (8th Dist.)
- Fipps v. Day, 2022-Ohio-3434, ¶ 2 (8th Dist.)

OPINION

PER CURIAM.

[Cite as State ex rel. Peterson v. Miday, 2026-Ohio-191.] COURT OF APPEALS OF OHIO EIGHTH APPELLATE DISTRICT COUNTY OF CUYAHOGA STATE EX REL. DAMIEN L. PETERSON, Relator,: No. 115723 v. JUDGE SHERRIE M. MIDAY,: Respondent.: JOURNAL ENTRY AND OPINION JUDGMENT: COMPLAINT DISMISSED IN PART AND GRANTED IN PART DATED: January 16, 2026 Writ of Procedendo Order No. 591284 Motion No. 590805 Appearances: Damien L. Peterson, pro se.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Craig A. McClelland, Assistant Prosecuting Attorney, for respondent. MARY J. BOYLE, J.: Damien L. Peterson ("Peterson") has filed a complaint for a writ of procedendo. Peterson seeks an order from this court that requires Judge Sherrie M. Miday ("Judge Miday") to render a ruling with regard to a second and successive petition for postconviction relief, filed in State v. Peterson, Cuyahoga C.P.

No. CR- 19-639520-A, on December 27, 2024. Peterson also seeks an order that requires Judge Miday to comply with Civ.R. 58, which requires the trial court to endorse on any civil judgment a direction to the clerk to serve upon all parties notice of the judgment and its date of entry upon the journal. Judge Miday has filed a motion to dismiss that is granted in part and denied in part.

I. Complaint for Procedendo is Moot Attached to the motion to dismiss is a copy of a judgment entry that demonstrates a ruling that denied Peterson's second and successive petition for postconviction relief and was journalized on December 18, 2025. Relief is unwarranted because

the request for a writ of procedendo is moot. Procedendo will not compel the performance of a duty that has already been performed.

State ex rel. Ames v. Pokorny, 2021-Ohio-2070, ¶ 7; Thompson v. Donnelly, 2018-Ohio-4073, ¶ 5; State ex rel. S.Y.C. v. Floyd, 2020-Ohio-5189, ¶ 9 (8th Dist.). See also State ex rel. Williams v. Croce, 2018-Ohio-2703, ¶ 7; State ex rel. Fontanella v. Kontos, 2008-Ohio-1431, ¶ 6. II. Civ.R. 58(B) Notice to Clerk of Courts Because an action for postconviction relief constitutes a civil proceeding, the notice requirement of Civ.R.

58(B) is applicable to any judgment rendered with regard to a motion for postconviction relief. State v. Nichols, 11 Ohio St.3d 40, 43 (1984). This court, in State v. Tucker, 2011-Ohio-4092, ¶ 9 (8th Dist.), specifically addressed the issue of Civ.R. 58(B) and the requirement that the trial court direct the clerk of courts to serve notice upon the parties of a civil judgment.

A review of the docket in Cuyahoga C.P. No. CR-19-639520-A fails to demonstrate that Judge Miday has complied with Civ.R. 58(B) when issuing civil judgments that denied or dealt with Peterson's second and successive petition for postconviction relief.¹ Thus, Judge Miday must comply with Civ.R. 58(B) and reissue any judgments, that denied Peterson's second and successive petition postconviction relief or dealt with his second and successive petition for postconviction relief, to contain language that directs the clerk of courts to serve upon all parties notice of the judgment and its date of entry upon the journal.

Accordingly, we grant in part and deny in part Judge Miday's motion to dismiss. Costs waived. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B). Complaint dismissed in part and granted in part. _____ MARY J. BOYLE, JUDGE LISA B. FORBES, P.J., and EILEEN T. GALLAGHER, J., CONCUR 1 An appellate court is permitted to take judicial notice of publicly accessible online court dockets.

Fipps v. Day, 2022-Ohio-3434, ¶ 2 (8th Dist.)