

SUPREME COURT OF OHIO

State ex rel. Poulton v. Cottrill

2016-Ohio-5789 (Ohio 2016) · No. 2015-1755 · Decided September 14, 2016

OPINION

State ex rel. Poulton v. Cottrill (Slip Opinion)

2016 Ohio 5789

PER CURIAM.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Poulton v. Cottrill, Slip Opinion No. 2016-Ohio-5789.]

NOTICE

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SLIP OPINION NO. 2016-OHIO-5789

[THE STATE EX REL.] POULTON, APPELLANT, v. COTTRILL, JUDGE, APPELLEE. [Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as State ex rel. Poulton v. Cottrill, Slip Opinion No. 2016-Ohio-5789.] Procedendo—Petition seeking writ requiring judge to rule on motion moot—Court of appeals’ dismissal of petition affirmed. (No. 2015-1755—Submitted July 12, 2016—Decided September 14, 2016.) APPEAL from the Court of Appeals for Muskingum County, No. CT2015-0014, 2015-Ohio-3857. _____ Per Curiam. {¶ 1} We affirm the judgment of the Court of Appeals for the Fifth District dismissing a petition for a writ of procedendo filed by appellant, Adam C. Poulton. Poulton seeks a writ requiring appellee, Judge Kelly J. Cottrill, to rule on his motion to vacate or set aside the judgment of his conviction. However, as Judge Cottrill

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has ruled on his motion, Poulton’s petition for a writ of procedendo is moot, and the court of appeals correctly dismissed it. {¶ 2} To be entitled to a writ of procedendo, Poulton must show 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 the law. State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas, 72 Ohio St.3d 461, 462, 650 N.E.2d 899 (1995). A writ of procedendo is proper when a court has refused to enter judgment or has unnecessarily delayed proceeding to judgment. State ex rel. Crandall, Pheils & Wisniewski v. DeCessna, 73 Ohio St.3d 180, 184, 652 N.E.2d 742 (1995). Procedendo will not compel the

performance of a duty that has already been performed. *State ex rel. Kreps v. Christiansen*, 88 Ohio St.3d 313, 318, 725 N.E.2d 663 (2000). {¶ 3} After filing his complaint, Poulton filed a memorandum arguing that the complaint was not moot. The memorandum emphasized that although Judge Cottrill had ruled on his motion to vacate or set aside the judgment of his conviction, she had not issued findings of fact and conclusions of law. However, because he did not provide a copy of the entry to the court of appeals, that court could not determine whether Judge Cottrill had issued findings of fact and conclusions of law. Poulton filed another motion including a copy of the entry, but the court of appeals denied the motion. {¶ 4} Judge Cottrill did not refuse to enter judgment. Rather, Poulton is dissatisfied with the entry that she issued. A writ of procedendo is therefore inappropriate. Moreover, Poulton had an adequate remedy in the ordinary course of the law by way of appeal of the entry. *State ex rel. Roberts v. Marsh*, 142 Ohio St.3d 481, 2014-Ohio-5242, 33 N.E.3d 6, ¶ 4, 5 (appeal is an adequate alternative remedy precluding a writ of procedendo). We therefore affirm the judgment of the court of appeals. 2 January Term, 2016 {¶ 5} Poulton also filed in this court a motion for default judgment, asserting that Judge Cottrill failed to file a merit brief here. We deny Poulton's motion because Judge Cottrill did, in fact, timely file a merit brief in this court and, in any event, Poulton's brief does not reasonably appear to sustain reversal. See S.Ct.Prac.R. 16.07(B) ("If the appellee fails to file a merit brief within the time provided by S.Ct.Prac.R. 16.03 or as extended in accordance with S.Ct.Prac.R. 3.03, the Supreme Court may accept the appellant's statement of facts and issues as correct and reverse the judgment if the appellant's brief reasonably appears to sustain reversal"). {¶ 6} Finally, Poulton requests oral argument. Oral argument in a direct appeal is discretionary. S.Ct.Prac.R. 17.02(A). This case presents a straightforward application of the criteria for a writ of procedendo rather than a matter of great public importance, complex issues of law or fact, a substantial constitutional issue, or a conflict among the courts of appeals. See *State ex rel. Manley v. Walsh*, 142 Ohio St.3d 384, 2014-Ohio-4563, 31 N.E.3d 608, ¶ 16, citing *Appenzeller v. Miller*, 136 Ohio St.3d 378, 2013-Ohio-3719, 996 N.E.2d 919, ¶ 4, and the cases cited therein. We therefore deny Poulton's motion for oral argument. Judgment affirmed and motions denied.

O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, KENNEDY,
FRENCH, and O'NEILL, JJ., concur. _____ Adam C. Poulton, pro se. D. Michael
Haddox, Muskingum County Prosecuting Attorney, and Gerald V. Anderson II, Assistant
Prosecuting Attorney, for appellee. _____ 3