

[Cite as *Trifilio v. Hurley*, 2001-Ohio-2414.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

Gregory Trifilio,

Petitioner

No. 00 CA 49

v.

DECISION & JUDGMENT
ENTRY

Pat Hurley, Warden

Respondent.

Released: 3/5/01

APPEARANCES:

PETITIONER *PRO SE*: Gregory Trifilio

COUNSEL FOR RESPONDENT: Diane Mallory, Assistant Ohio Attorney
General, Corrections Litigation Section,
140 East Town Street - 14th Floor,
Columbus, Ohio 43215

PER CURIAM:

Petitioner, Gregory Trifilio, filed a Petition for Writ of Habeas Corpus. Respondent, Pat Hurley, filed a Motion to Dismiss for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6).

On February 6, 2001, this court *sua sponte*, converted respondent's Motion to Dismiss to a Motion for Summary Judgment and ordered the parties to submit all pertinent evidence that is permitted pursuant to Civ.R. 56(C), [*i.e.*, affidavits, etc. which conform to Civ.R. 56(E)] including but not limited to documentary evidence of petitioner's incarceration status, on or before February 16, 2001.

In response to this court's order, respondent filed a Supplement to Respondent's Motion to Dismiss asserting that petitioner, Gregory Trifilio, is no longer incarcerated. Respondent

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attached an affidavit from the Records Officer Supervisor at the
Correctional Reception Center that stated that Trifilio was

released from CRC on December 15, 2000 and is no longer in re-
spondent's custody.

Upon consideration, this court finds that this issue is now
moot. See, *Heitman v. Tate* (Jan. 23, 2001), Belmont App. No. 98-
BA-27, unreported; *Lamb v. Haskins* (June 21, 2000), Noble App. No.
257, unreported.

PETITION DISMISSED.

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JUDGMENT ENTRY

Petitioner's Petition for Writ of Habeas Corpus is
DISMISSED.

The costs of this action are taxed to petitioner.

The Clerk of Courts is directed to mail a copy of this
Decision and Judgment Entry to all counsel and to petitioner
personally by regular U.S. mail.

Harsha, J. and Abele, P.J. Concur

FOR THE COURT

By: _____
Roger L. Kline,
Administrative Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final
judgment entry and the time period for further appeal commences
from the date of filing with the clerk.