

[Cite as *State v. Grunden*, 2011-Ohio-744.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 96114

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**STATE OF OHIO,**

RESPONDENT

vs.

**THOMAS L. GRUNDEN**

RELATOR

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**JUDGMENT:  
WRIT DENIED**

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Writ of Mandamus/Procedendo  
Motion No. 440352  
Order No. 441627

**RELEASE DATE:** February 15, 2011

**FOR RELATOR**

Thomas L. Grunden, pro se  
Inmate # 574-766  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, Ohio 44901

**ATTORNEYS FOR RESPONDENT**

William D. Mason  
Cuyahoga County Prosecutor

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

MARY EILEEN KILBANE, A.J.:

{¶ 1} On December 3, 2010, Thomas Grunden commenced what he styled as an “Emergency writ of mandamus and/or procedendo.” He seeks this writ to compel the Cuyahoga County Common Pleas Court and/or its clerk to serve him with certain journal entries from the underlying case, *State v. Grunden*, Cuyahoga County Common Pleas Court Case No. CR-525977. On December 21, 2010, the respondent moved for summary judgment on the grounds of mootness and pleading deficiencies. Grunden

never opposed this motion. For the following reasons, this court grants the motion for summary judgment and denies the application for a writ of mandamus and/or procedendo.

{¶ 2} Grunden alleges that in the underlying case on June 16, 2010, he filed the following motions with the trial court: (1) motion to withdraw guilty plea, (2) motion to vacate sentence, (3) motion for trial transcript, (4) motion for expert assistance, and (5) motion for evidentiary hearing. The trial court denied these motions on June 30, 2010.

On September 24, 2010, Grunden filed another motion to vacate sentence, and the trial court denied the motion on October 14, 2010. Grunden alleges that the clerk of court never served him with the subject entries.

{¶ 3} Attached to the motion for summary judgment is the affidavit of the trial judge's bailiff in which he states that he mailed copies of the subject entries to Grunden. Grunden never opposed this motion. Thus, Grunden has received his requested relief, copies of the subject journal entries, and this matter is moot.

{¶ 4} Additionally, the petition is defective because it is improperly captioned. Grunden styled his petition as "*State of Ohio v. Thomas Grunden.*" R.C. 2731.04 requires that an application for a writ of mandamus "must be by petition, in the name of the state on the relation of the person applying." This failure to properly caption a mandamus action is sufficient grounds for denying the writ and dismissing the petition. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270. Moreover, the failure to caption the case correctly creates uncertainty as to the

identity of the respondent and as to the duty to enforce.<sup>1</sup> This court has held that this deficiency alone also warrants dismissal. *State ex rel. Calloway v. Court of Common Pleas of Cuyahoga Cty.* (Feb. 27, 1997), Cuyahoga App. No. 71699; *State ex rel. Samuels v. Mun. Court* (Nov. 22, 1994), Cuyahoga App. No. 67762; and *State ex rel. White v. Villanueva* (Oct. 6, 1993), Cuyahoga App. No. 66009.

{¶ 5} Grunden also failed to support his complaint with an affidavit “specifying the details of the claim” as required by Loc.R. 45(B)(1)(a). *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, 914 N.E.2d 402; *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.

{¶ 6} 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. This also is sufficient reason to deny the mandamus, deny indigent 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 Cty. Court of Common Pleas*, 88 Ohio St.3d 176, 2000-Ohio-285, 724 N.E.2d 420.

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<sup>1</sup> In his prayer for relief, Grunden seeks leave to appeal to this court the denial of his motions. It is hard to conceive how this court could be a respondent in a writ before it. This court also notes that Grunden is appealing the October 14, 2010 denial of his motion to vacate sentence. *State v. Grunden*, Cuyahoga App. No. 95909.

{¶ 7} Accordingly, the court grants the respondent's motion for summary judgment and denies the writ. Costs assessed against the relator. The court directs the Clerk for the Eighth District Court of Appeals 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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MARY EILEEN KILBANE, ADMINISTRATIVE JUDGE

JAMES J. SWEENEY, J., and  
COLLEEN CONWAY COONEY, J., CONCUR