

THE STATE EX REL. CALL, APPELLANT, v. ZIMMERS, CLERK, APPELLEE.

[Cite as *State ex rel. Call v. Zimmers* (1999), ___ Ohio St.3d ____.]

Mandamus to compel clerk of common pleas court to provide relator with a free copy of his 1974 criminal trial transcript — Complaint dismissed, when.

(No. 98-2668 — Submitted March 9, 1999 — Decided April 28, 1999.)

APPEAL from the Court of Appeals for Montgomery County, No. 17441.

In 1974, appellant, John W. Call, was convicted of kidnapping and murder, and sentenced to prison. On appeal, the court of appeals affirmed. A transcript of the proceedings was filed in the court of appeals for purposes of the appeal.

In September 1998, Call filed a complaint in the Court of Appeals for Montgomery County for a writ of mandamus to compel appellee, Craig Zimmers, Clerk of the Montgomery County Common Pleas Court, to provide him with a free copy of his 1974 criminal trial transcript. Zimmers filed a Civ.R. 12(B)(6) motion to dismiss the complaint for failure to state a claim upon which relief can be granted. In December 1998, the court of appeals granted the motion and dismissed the complaint.

This cause is now before the court upon an appeal as of right.

John W. Call, pro se.

Mathias H. Heck, Jr., Montgomery County Prosecuting Attorney, and *Lisa K. North*, Assistant Prosecuting Attorney, for appellee.

Per Curiam. Call asserts that the court of appeals erred in dismissing his mandamus action. For the following reasons, Call's assertion lacks merit.

First, Call was not entitled to a transcript because his transcript had already been filed in his direct appeal. *State ex rel. Grove v. Nadel* (1998), 81 Ohio St.3d 325, 326, 691 N.E.2d 275, 276. Only one copy of a transcript of a criminal trial

need be provided to an indigent criminal defendant. *State ex rel. Murr v. Thierry* (1987), 34 Ohio St.3d 45, 45-46, 517 N.E.2d 226, 227.

Second, although Call claimed that he needed the copy of the transcript to help him prepare an appeal in Supreme Court case No. 98-1264, that appeal was no longer pending when the court of appeals denied the writ. *State v. Call* (1998), 83 Ohio St.3d 1471, 701 N.E.2d 379. The right of an indigent prisoner to relevant portions of a transcript is limited to *pending* actions. *Murr*, 34 Ohio St.3d at 45, 517 N.E.2d at 226-227.

Finally, Call possessed an adequate legal remedy to obtain the requested transcript, *i.e.*, a motion in this court while his latest appeal was pending. See *State ex rel. Jones v. Montgomery Cty. Court of Common Pleas* (1996), 75 Ohio St.3d 642, 643, 665 N.E.2d 673, 674.

Based on the foregoing, we affirm the judgment of the court of appeals.

Judgment affirmed.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.