

**In the
Indiana Supreme Court**

STATE OF INDIANA <i>ex rel.</i>)	Supreme Court No.
Demetreous A. BROWN, Sr.,)	49S00-1012-OR-694
)	
Relator,)	
)	
v.)	
)	
THE MARION CIRCUIT COURT, <i>et al.</i> ,)	
)	
Respondents.)	



ORDER

Relator Demetreous A. Brown, Sr., *pro se*, has filed a verified petition for writ of mandamus and prohibition under the rules governing original actions. Respondents (the Marion Circuit Court, the Honorable Louis F. Rosenberg, and the Honorable Sheryl Lynch) have filed a brief opposing issuance of the writ.

Relator has tendered a reply brief, which this Court construes as an implied request for permission to file the reply brief. The Court GRANTS that request and directs the Clerk to show Relator's reply brief filed as of the date of tender, January 21, 2011.

Each member of the Court has had an opportunity to review the petition, briefs, and other application papers, and has had an opportunity to discuss the request for a permanent writ.

The papers filed reveal Relator is a party to a civil case in the Marion Circuit Court ("court"). Relator informed the court that he is incarcerated in a federal prison in Kentucky that has telephonic conferencing capabilities, which would allow him to appear telephonically for any hearing. When Relator requested a hearing on a motion he filed seeking relief, the court set a hearing for January 6, 2011, and stated that Relator may use a telephonic appearance service called "CourtCall." Thereafter, Relator filed a verified petition to waive the fee associated with using CourtCall, asserted that he is indigent and unable to pay that fee, and requested appointment of counsel. The court denied Relator's request to waive the fee and denied the request for counsel. Relator then filed this original action accusing Respondents of violating his constitutional right to access to the court. Relator requested a permanent writ requiring the court to equip itself so that indigent incarcerated persons are able to appear telephonically and to "[c]ease requiring those true indigent incarcerated persons to pay Court[C]all fees to appear telephonically." (Pet. at 2.) In light of the upcoming January 6, 2011 hearing, Relator also sought an emergency writ to stay the proceedings below.

On December 22, 2010, the Chief Justice signed an Emergency Writ that granted a temporary stay of all proceedings in the case below until this Court could consider Relator's request for permanent relief.

On January 14, 2011, Respondents filed a record of proceedings and brief opposing issuance of the writ. Among Respondents' papers is an affidavit that states the following. CourtCall is a private business that provides scheduling services for court proceedings conducted by phone, and it charges parties who use the service. The court does not require that parties use CourtCall. The court's policy for hearings has been to order transportation of parties incarcerated in Indiana. The court did not have a policy on the payment of CourtCall fees when Relator requested a waiver, but CourtCall has now waived Relator's fee at the request of the court. (Judge's Aff. ¶ 6.) It will be the court's policy to utilize fully the Department of Correction's video conferencing facilities, and when video conferencing facilities are unavailable to an incarcerated party and telephone conferencing is appropriate, it will be the court's policy to seek a waiver of the CourtCall fee or make alternative arrangements for the participation of the incarcerated person. (Id. at ¶ 6.)

Regrettably, Relator had to go to great lengths to obtain what the Respondents eventually arranged only after the filing of this original action: a waiver of the CourtCall fee. Also of concern is the statement in Respondents' brief that the January 6, 2011 hearing did not take place because the party opposing Relator failed to appear and Relator failed to obtain proper service upon the opposing party. The Emergency Writ, though, required that Respondents stay all proceedings in the case below until this Court ruled on Relator's request for permanent relief.

Nevertheless, in light of the affidavit submitted by Respondents, including especially the assurance that CourtCall has waived Relator's fee, this Court DENIES Relator's request for a permanent writ as moot. See State ex rel. Wabash Valley Broad. Corp. v. Vigo Cir. Ct., 448 N.E.2d 658, 659 (Ind. 1983) ("Court will not direct the issuance of mandamus where duty sought to be enforced has already been performed."). Motions to reconsider or petitions for rehearing are not allowed. Ind. Original Action Rule 5(C).

The Clerk is directed to send a copy of this order to the Marion Circuit Court; the Hon. Louis F. Rosenberg, Judge; the Hon. Sheryl Lynch, Commissioner; Thomas R. Ruge and Barry S. Wormser, One American Square, Suite 2500, Indianapolis, IN 46282; Demetreous A. Brown, Sr., #07860-028, Federal Correctional Institution, P.O. Box 6001, Ashland, KY 41105; and Elisha J. Gray, 10858 Bellflower Ct., Indianapolis, IN 46235. The Clerk is also directed to post this order to the Court's website.

Done at Indianapolis, Indiana, this 11th day of February, 2011.

Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

All Justices concur.