

[Cite as *State ex rel. Steele v. McClelland*, 2017-Ohio-8233.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105893

**STATE OF OHIO, EX REL.
TRACEE STEELE**

RELATOR

vs.

JUDGE ROBERT C. McCLELLAND

RESPONDENT

**JUDGMENT:
WRITS DENIED**

Writs of Prohibition and Mandamus
Motion No. 508534
Order No. 510471

RELEASE DATE: October 17, 2017

FOR RELATOR

Tracee Steele, pro se
Inmate No. A521-540
Grafton Correctional Institution
2500 South Avon-Belden Road
Grafton, Ohio 44044

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} Relator Tracee Steele commenced an action for a writ of prohibition and a writ of mandamus, asking this court to order respondent Judge Robert McClelland to vacate a judgment entered in Cuyahoga C.P. No. CR-06-484795-A that Steele contends is void. According to Steele, “respondent, predecessor judge, acted without authority when entering the judgment dismissing the indictment in CR-06-484795, without demonstrating the requirement of ‘good cause shown.’” In addition to seeking the order vacated, Steele requests that this court “place the parties in the same position they were in before the void judgment was entered.” Steele appears to want his case reinstated in Case No. CR-06-484795-A as a means to vacate his subsequent guilty plea and conviction in Cuyahoga C.P. No. CR-06-489173-A.

{¶2} Respondent has moved for summary judgment on several grounds, including that the order dismissing the indictment was not void and that Steele had an adequate remedy at law. For the reasons that follow, we grant respondent’s motion for summary judgment and deny the writs.

I. Procedural History and Facts

{¶3} On August 10, 2006, Steele was indicted in Case No. CR-06-484795-A on 26 counts, including several counts of gross sexual imposition and kidnapping. While that case was still pending and prior to trial, a second indictment was issued on November 27, 2006, against Steele in Case No. CR-06-489173-A, that was nearly identical to the

first indictment in Case No. CR-06-484795-A. The second indictment, however, replaced two of the gross sexual imposition counts with rape counts.

{¶4} On December 6, 2006, prior to trial in Case No. CR-06-484795-A, the trial court addressed the parties on the record and indicated that a second indictment had been obtained. The trial court inquired whether the state was moving to dismiss one of them because they appeared to be “somewhat duplicate indictments.” At that time, the state moved to dismiss the first indictment and proceed on the second indictment in Case No. CR-06-489173-A, which the trial court granted. Two days later, the trial court filed its judgment entry, dismissing the case upon the prosecutor’s motion.

{¶5} On June 24, 2013, Steele filed a motion to dismiss in Case No. CR-06-489173-A on speedy trial grounds. The trial court denied the motion, and Steele appealed. In *State v. Steele*, 8th Dist. Cuyahoga No. 100289, 2014-Ohio-1085, this court affirmed the trial court’s denial of the motion. Next, Steele filed a petition for writ of habeas corpus in the Ninth District Court of Appeals, claiming that the trial court lacked jurisdiction to try him because the matter was res judicata. The Ninth District rejected Steele’s claim, which was affirmed by the Ohio Supreme Court. *See State ex rel. Steele v. Eppinger*, 147 Ohio St.3d 404, 2016-Ohio-5790, 66 N.E.3d 718.

{¶6} Now, this matter is before this court on Steele’s petition for a writ of prohibition and a writ of mandamus. The thrust of Steele’s petition is that the trial court granted the state’s motion to dismiss the first indictment in Case No. CR-06-484795-A without requiring a showing of “good cause” under R.C. 2941.33 and Crim.R. 48(A), thereby rendering the judgment void. Steele further argues that he has no adequate remedy at law because the dismissal of his case was not a final appealable order. According to Steele, writs of mandamus and prohibition lie to compel respondent to vacate the void dismissal entry issued in Case No. CR-06-484795-A and place him in the

“same position” at the time that the case was dismissed. In essence, Steele seeks an order compelling the trial court to vacate Steele’s subsequent conviction in Case No. CR-06-489173-A as a result of the alleged void dismissal entry in Case No. CR-06-484795-A.

II. Law and Analysis

{¶7} To be entitled to a writ of prohibition in this case, Steele must establish that (1) respondent “is about to or has exercised judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law.” *State ex rel. Shumaker v. Nichols*, 137 Ohio St.3d 391, 2013-Ohio-4732, 999 N.E.2d 630, ¶ 9. ““In the absence of a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party contesting that jurisdiction has an adequate remedy by appeal.”” *State ex rel. Skyway Invest. Corp. v. Ashtabula Cty. Court of Common Pleas*, 130 Ohio St.3d 220, 2011-Ohio-5452, 957 N.E.2d 24, ¶ 10, quoting *State ex rel. Plant v. Cosgrove*, 119 Ohio St.3d 264, 2008-Ohio-3838, 893 N.E.2d 485, ¶ 5.

{¶8} As for mandamus, the elements are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. *See State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6. Mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese*, 69 Ohio St.3d 176, 631 N.E.2d 119 (1994). Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Nash v. Fuerst*, 8th Dist.

Cuyahoga No. 99027, 2013-Ohio-592, ¶ 6. Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108, and *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.*, 56 Ohio St.3d 33, 564 N.E.2d 86 (1990).

{¶9} Moreover, it is well settled that both mandamus and prohibition are extraordinary writs that should be used with great caution and not issue in doubtful cases.

State ex rel. Novak v. Boyle, 8th Dist. Cuyahoga No. 85358, 2005-Ohio-1199, ¶ 6, citing *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977); *State ex rel. Merion v. Court of Common Pleas*, 137 Ohio St.2d 273, 28 N.E.2d 641 (1940).

{¶10} In this case, Steele fails to meet the established elements for either writ. First, we find that the record belies Steele's claim that the trial court acted without authority in granting the state's motion to dismiss in Case No. CR-06-484795-A.

Crim.R. 48(A) provides that the state, by leave of court and in open court, may file an entry of dismissal which will terminate the prosecution. R.C. 2941.33 provides that the prosecuting attorney may enter a nolle prosequi with leave of court on good cause shown and in open court. These provisions are essentially identical, except that R.C. 2941.33 provides that a nolle prosequi entered contrary to these provisions is void.

Lakewood v. Pfeifer, 83 Ohio App.3d 47, 50, 613 N.E.2d 1079 (8th Dist.1992), quoting *State v. Sutton*, 64 Ohio App.2d 105, 107, 411 N.E.2d 818 (9th Dist.1979).

{¶11} "Good cause," which has been defined as "a substantial reason and one that affords a legal excuse," is a determination that can be made only on a case-by-case basis. *State v. Brown*, 38 Ohio St.3d 305, 308, 528 N.E.2d 523 (1988).

{¶12} The record reflects that the prosecutor, in open court, timely moved to dismiss the first indictment as a result of the second indictment obtained against Steele, which contained nearly all the same counts, except for the substituted rape counts.¹ Notably, Steele did not object to the dismissal. Based on the circumstances of this case, including the timing of the motion, the good cause element was satisfied to support the trial court's granting of the state's motion to dismiss. *See generally State v. McWilliams*, 8th Dist. Cuyahoga No. 68571, 1995 Ohio App. LEXIS 2774 (June 29, 1995) (recognizing that good cause exists to dismiss a first indictment when a second indictment was being sought to include additional charges against codefendant as an aider and abettor).

{¶13} Second, even if Steele could establish that the trial court dismissed Case No. CR-06-484795-A without good cause, he nonetheless had an adequate remedy of law by virtue of an appeal following his conviction in Case No. CR-06-489173-A. Here, there is no question that respondent had subject-matter jurisdiction over Steele's second indicted case in Case No. CR-06-489173-A. R.C. 2931.03 vests the common pleas court with original jurisdiction of all crimes and offenses. Thus, respondent was not patently and unambiguously without jurisdiction to adjudicate the case, even if there were errors

¹ We note that both the court and the prosecutor initially referenced the wrong case number in addressing the first indicted case against Steele. The prosecutor's misstatement of the case number, however, does not negate the validity of the state's motion in open court. It is clear from the record that the parties understood that the prosecutor was referring to Case No. CR-06-484795-A, which was the only other case pending against Steele at the time of the prosecutor's motion. Moreover, defense counsel subsequently properly identified the correct case number on the record, thereby alleviating any confusion.

or irregularities. *See Lenard v. Russo*, 8th Dist. Cuyahoga No. 98106, 2012-Ohio-2397, ¶ 7, *aff'd*, 133 Ohio St.3d 152, 2012-Ohio-4236, 976 N.E.2d 890.

{¶14} To the extent that Steele contends that the trial court's dismissal of the first indicted case was void, he could have moved to dismiss the second indicted case on that basis, and if unsuccessful, he could have subsequently appealed any adverse ruling at the conclusion of the case. *See State ex rel. Dailey v. Dawson*, 149 Ohio St.3d 685, 2017-Ohio-1350, 77 N.E.3d 937; *see also State v. Monroe*, 4th Dist. Pike No. 99CA32, 2000 Ohio App. LEXIS 2745 (June 14, 2000) (addressing the validity of a dismissal of first indictment on direct appeal of conviction on second indictment). His failure to exercise that right does not now entitle him to an extraordinary writ. *Jackson v. Wilson*, 100 Ohio St.3d 315, 2003-Ohio-6112, 798 N.E.2d 1086, ¶ 9.

{¶15} Accordingly, we grant respondent's motion for summary judgment. Costs to Steele. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶16} Writs denied.

ANITA LASTER MAYS, JUDGE

TIM McCORMACK, P.J., and
SEAN C. GALLAGHER, J., CONCUR