

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE EX REL. BELVIN MCGEE,	:	
Relator,	:	
		No. 109207
v.	:	
MICHAEL J. RUSSO, JUDGE,	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT DENIED

DATED: February 7, 2020

Writ of Mandamus
Motion No. 534085
Order No. 535056

Appearances:

Belvin McGee, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, *for respondent*.

FRANK D. CELEBREZZE, JR., P.J.:

{¶ 1} Belvin McGee has filed a complaint for a writ of mandamus. McGee seeks an order from this court that requires Judge Michael J. Russo to vacate the sentence imposed in *State v. McGee*, Cuyahoga C.P. No. CR-99-383003 and

resentence him in compliance with Crim.R. 32(C). Judge Russo has filed a motion for summary judgment that is granted for the following reasons. In addition, McGee is declared a vexatious litigator pursuant to Loc.App.R. 23.

{¶ 2} McGee's request for resentencing and the entry of a judgment in compliance with Crim.R. 32(C) is barred from consideration by the doctrine of res judicata. The Supreme Court of Ohio has held that:

The doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel. *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 381, 1995-Ohio-331, 653 N.E.2d 226. Claim preclusion prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action. *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.* (1998), 81 Ohio St.3d 392, 395, 1998-Ohio-435, 692 N.E.2d 140. Where a claim could have been litigated in the previous suit, claim preclusion also bars subsequent actions on that matter. *Grava*, 73 Ohio St.3d at 382, 653 N.E.2d 226.

Issue preclusion, on the other hand, serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies. *Fort Frye*, 81 Ohio St.3d at 395, 692 N.E.2d 140. Issue preclusion applies even if the causes of action differ. *Id.*

O'Nesti v. DeBartolo Realty Corp., 113 Ohio St.3d 59, 2007-Ohio-1102, 862 N.E.2d 803, ¶ 6.

{¶ 3} McGee has previously raised, before this court, the issues of a void judgment, failure to comply with Crim.R. 32(C), and unlawful classification as a sexual predator. *See State v. McGee*, 8th Dist. Cuyahoga No. 106423, 2018-Ohio-3171; *State v. McGee*, 8th Dist. Cuyahoga No. 104566, 2017-Ohio-1363; *State v.*

McGee, 8th Dist. Cuyahoga No. 102740, 2015-Ohio-4908; *State v. McGee*, 8th Dist. Cuyahoga No. 89133, 2007-Ohio-6655. Further review of the issues of a void judgment, failure to comply with Crim.R. 32(C), and unlawful classification as a sexual predator is barred by the doctrine of res judicata. *State v. Slagle*, 97 Ohio St.3d 332, 2002-Ohio-6612, 779 N.E.2d 1041; *State v. Timmons*, 8th Dist. Cuyahoga No. 105940, 2019-Ohio-3506; *State v. Lester*, 8th Dist. Cuyahoga No. 105993, 2018-Ohio-5154; *State v. Wynn*, 8th Dist. Cuyahoga No. 103824, 2017-Ohio-9151.

{¶ 4} In addition, the issues currently raised by McGee, that involve a void sentence imposed in *State v. McGee*, Cuyahoga C.P. No. CR-99-383003 and the need for resentencing in compliance with Crim.R. 32(C), were previously argued in a complaint for a writ of mandamus filed with the Supreme Court of Ohio in *State ex rel. McGee v. Russo*, Case No. 19-0090. McGee, in the complaint for a writ of mandamus filed in the Ohio Supreme Court, stated that “wherefore, [McGee] prays that the Honorable Supreme Court of Ohio issue an order upon [Judge Russo], compelling said [Judge Russo] to vacate its void judgment and issue a new sentencing entry that conforms with Crim.R. 32(C).” Specifically, McGee argued that he was unlawfully classified as a sexual predator, which resulted in a void sentence that required Judge Russo to vacate his conviction and conduct a de novo resentencing hearing.

{¶ 5} On April 10, 2019, the Supreme Court of Ohio granted Judge Russo’s motion to dismiss McGee’s complaint for a writ of mandamus without opinion. *See*

State ex rel. McGee v. Russo, 155 Ohio St.3d 1417, 2019-Ohio-1315, 120 N.E.3d 864. Res judicata thus bars any further review of the claims presently argued by McGee, because they were previously argued before the Ohio Supreme Court and found to be without merit. *State ex rel. Sneed v. Anderson*, 114 Ohio St.3d 11, 2007-Ohio-2454, 866 N.E.2d 1084; *State ex rel. Mora v. Wilkinson*, 105 Ohio St.3d 272, 2005-Ohio-1509, 824 N.E.2d 1000. *See also Mubashshir v. Sheldon*, 3d Dist. Marion No. 9-10-39, 2010-Ohio-4808.

{¶ 6} Finally, Judge Russo has requested that McGee be declared a vexatious litigator pursuant to Loc.App.R. 23. We agree. Pursuant to Loc.App.R. 23(A), an appeal or original action shall be considered frivolous if it is not reasonably grounded in fact or warranted by existing law. Loc.App.R. 23(B) further provides that a party that habitually, persistently, and without reasonable cause engages in frivolous conduct, may be declared a vexatious litigator subject to filing restrictions.

{¶ 7} In *State ex rel. McGrath v. McClelland*, 8th Dist. Cuyahoga No. 97209, 2012-Ohio-157, this court determined, in a similar situation, that a party's conduct in refiling appeals and original actions premised on the same arguments already determined to be without merit by the appellate court, constituted grounds to deem the party a vexatious litigator pursuant to Loc.App.R. 23(A). *Id.* at ¶ 7. This court noted that McGrath "ha[d] continually taxed the limited resources of this court through the filing of 23 appeals and 13 original actions over the past 10 years."

Id. at ¶ 6. This court also imposed prospective filing restrictions based on that finding. *Id.* at ¶ 7.

{¶ 8} McGee has previously filed 18 appeals and 1 original action. See Attachment “A” as attached to this opinion. Sixteen of the appeals and the initial original action alleged the same facts and issues raised in this complaint for a writ of mandamus; a void judgment, failure to comply with Crim.R. 32(C), and unlawful classification as a sexual predator is barred by the doctrine of res judicata. McGee has continually taxed the limited resources of this court through the filing of 18 appeals and 2 original actions over the past 20 years.

{¶ 9} Accordingly, McGee is prohibited from instituting any future legal proceedings in the Eighth District Court of Appeals without first obtaining leave. He is further prohibited from filing any proceedings in the Eighth District Court of Appeals without the filing fee and security for costs required by Loc.App.R. 3(A). Any request to file an appeal or original action shall be submitted to the clerk of this court for the court’s review. *Sultaana v. Horseshoe Casino*, 8th Dist. Cuyahoga No. 102501, 2015-Ohio-4083; *Calhoun v. Calhoun*, 8th Dist. Cuyahoga No. 101268, 2014-Ohio-5692; *State v. Henderson*, 8th Dist. Cuyahoga No. 100374, 2014-Ohio-2274.

{¶ 10} Accordingly, we grant Judge Russo’s motion for summary judgment. McGee is declared to be a vexatious litigator pursuant to Loc.App.R. 23. Costs to McGee. 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).

{¶ 11} Writ denied.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
RAYMOND C. HEADEN, J., CONCUR

Attachment “A”

1. *State v. McGee*, 8th Dist. Cuyahoga No. 77463, filed 1/5/00
2. *State v. McGee*, 8th Dist. Cuyahoga No. 77475, filed 1/7/00
3. *State ex rel. McGee v. Mahon*, 8th Dist. Cuyahoga No. 81753, filed 9/11/02
4. *State v. McGee*, 8th Dist. Cuyahoga No. 82092, filed 11/21/02
5. *State v. McGee*, 8th Dist. Cuyahoga No. 83613, filed 10/14/03
6. *State v. McGee*, 8th Dist. Cuyahoga No. 84171, filed 2/06/04
7. *State v. McGee*, 8th Dist. Cuyahoga No. 87015, filed 9/13/05
8. *State v. McGee*, 8th Dist. Cuyahoga No. 88130, filed 5/05/06
9. *State v. McGee*, 8th Dist. Cuyahoga No. 88167, filed 5/16/06
10. *State v. McGee*, 8th Dist. Cuyahoga No. 89133, filed 12/11/06
11. *State v. McGee*, 8th Dist. Cuyahoga No. 91638, filed 6/13/08
12. *State v. McGee*, 8th Dist. Cuyahoga No. 95258, filed 6/10/10
13. *State v. McGee*, 8th Dist. Cuyahoga No. 95899, filed 10/21/10
14. *State v. McGee*, 8th Dist. Cuyahoga No. 101307, filed 4/28/14
15. *State v. McGee*, 8th Dist. Cuyahoga No. 102740, filed 3/17/15
16. *State v. McGee*, 8th Dist. Cuyahoga No. 103036, filed 5/14/15
17. *State v. McGee*, 8th Dist. Cuyahoga No. 104566, filed 6/06/16
18. *State v. McGee*, 8th Dist. Cuyahoga No. 106423, filed 10/25/17
19. *State v. McGee*, 8th Dist. Cuyahoga No. 108899, filed 8/14/19
20. *State ex rel. McGee v. Russo*, 8th Dist. Cuyahoga No. 109207, filed 11/15/19