

[Cite as *State ex rel. Bandarapalli v. Gallagher*, 2010-Ohio-3886.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95506

**STATE OF OHIO, EX REL.
RAJPAL BANDARAPALLI**

RELATOR

VS.

HONORABLE JUDGE EILEEN T. GALLAGHER

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Prohibition
Motion No. 436327
Order No. 436392

RELEASE DATE: August 13, 2010

FOR RELATOR

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MELODY J. STEWART, J.:

Rajpal Bandarapalli, the relator, has filed a complaint for a writ of prohibition. Bandarapalli seeks an order from this court that prohibits Judge Eileen T. Gallagher, the respondent, from proceeding to trial or conducting any proceedings in *State v. Bandarapalli*, Cuyahoga County Court of Common Pleas Case No. CR-533200. For the following reasons, we sua sponte dismiss Bandarapalli's complaint for a writ of prohibition.

A writ of prohibition constitutes a legal order that is intended to enjoin a court of inferior jurisdiction from acting beyond the scope of its jurisdiction. *State ex rel. Tubbs v. Suster* (1998), 84 Ohio St.3d 70, 701 N.E.2d 1002. In order for this court to issue a writ of prohibition, Bandarapalli must establish that (1) Judge Gallagher is about to exercise judicial or quasi-judicial power, (2) the exercise of that power is not authorized by law, and (3) denying the writ will result in injury for

which no other adequate remedy exists in the ordinary course of the law. *State ex rel. Sliwinski v. Burnham Unruh*, 118 Ohio St.3d 76, 2008-Ohio-1734, 886 N.E.2d 201; *State ex rel. Lipinski v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 19, 1995-Ohio-96, 655 N.E.2d 1303. An adequate remedy at law will preclude relief in prohibition. *State ex rel. Leshner v. Kainrad* (1981), 65 Ohio St.2d 68, 417 N.E.2d 1382; *State ex rel. Sibarco Corp. v. City of Berea* (1966), 7 Ohio St.2d 85, 218 N.E.2d 428. Furthermore, absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction over an action possesses the legal authority to determine its own jurisdiction, and a party challenging its jurisdiction has an adequate remedy at law by way of a post-judgment appeal. *Whitehall ex rel. Wolfe v. Ohio Civ. Rights Comm.*, 74 Ohio St.3d 120, 1995-Ohio-302, 656 N.E.2d 688.

In the present case, Bandarapalli's complaint for a writ of prohibition is essentially based upon two separate claims: (1) a defective indictment as issued in CR-533200; and (2) Judge Gallagher conducted a hearing with regard to the "State's motion under Criminal Rule 16(B)(1)(e) to withhold witnesses names and addresses and prevent contact between the relator and the witness" that prevents her from presiding over the trial in CR-533200. Initially, we find that the indictment as issued in CR-533200 is not defective. Bandarapalli was indicted by the Cuyahoga County Grand Jury on January 29, 2010, and was charged with the following four criminal violations: (1) count one - promoting prostitution (R.C.

2907.22(A)(2)), with five forfeiture of property specifications (R.C. 2941.1417(A)); (2) count two - promoting prostitution (R.C. 2907.22(A)(4)), with five forfeiture of property specifications; (3) promoting prostitution (R.C. 2907.22(A)(4)) with five forfeiture property specifications; and (4) possessing criminal tools (R.C. 2923.24(A)) with five forfeiture property specifications. Under Ohio law, a criminal indictment is intended to serve two basic functions: (1) to compel the state to aver all material elements of the charged offense so that a defendant receives proper notice and a reasonable opportunity to defend against the criminal charges; and (2) to protect the defendant from future prosecution for the same criminal offense vis-a-vis the doctrine of double jeopardy. *State v. Childs*, 88 Ohio St.3d 194, 2000-Ohio-298, 724 N.E.2d 781. In *Childs*, the Supreme Court of Ohio also established that the requirements for a technically correct indictment are met if the prosecutor follows the language of the statute that defines the charged offense. *Id.*, at 198. The indictment need not state the particular facts of the case, because the defendant can obtain a statement of the specific facts and allegations through a bill of particulars. *State v. Smith*, Cuyahoga App. No. 83007, 2004-Ohio-3619.

Herein, the four counts of the indictment contain the specific language as contained within R.C. 2907.22(A)(2), dealing with the offense of promoting prostitution (knowingly supervise, manage, or control the activities of a prostitute in engaging in sexual activity for hire), R.C. 2907.22(A)(4), dealing with the

offense of promoting prostitution (knowingly induce or procure another to engage in sexual activity for hire), R.C. 2923.24(A), dealing with the offense of possessing criminal tools, and R.C. 2941.1417(A), dealing with the specification of forfeiture of property. The indictment also indicated that the charged offenses occurred within Cuyahoga County, Ohio. Thus, we find that Judge Gallagher does possess the necessary jurisdiction to preside over the criminal proceedings in CR-533200, because the indictment is not defective.

We also find that Bandarapalli has failed to demonstrate that Judge Gallagher patently and unambiguously lacks jurisdiction to preside over the criminal proceedings in CR-533200, based upon a hearing held under Crim.R. 16(B)(1)(e). In *State v. Gillard* (1988), 40 Ohio St.3d 226, 53 N.E.2d 272, the Supreme Court of Ohio held that:

“When the state seeks to obtain relief from discovery or to perpetuate testimony under Crim.R. 16(B)(1)(e), the judge who disposes of such a motion may not be the same judge who will conduct the trial.

“However, we also hold that violation of the rule we announce today is not per se prejudicial. Thus, while it was error in this case for the judge to have presided at trial after hearing the state’s certification, we find that error harmless in light of the overwhelming evidence of guilt * * *” *Id.*, at 229.

Herein, Bandarapalli has failed to establish any prejudice that has resulted from Judge Gallagher presiding over a hearing pursuant to Crim.R. 16(B)(1)(e).

Absent such a demonstration, we cannot find that Judge Gallagher patently and unambiguously lacks jurisdiction to preside over the criminal trial scheduled in CR-533200. In addition, this issue can potentially be raised as an assignment of error on appeal, which constitutes an adequate remedy at law. *State ex rel. Hughley v. McMonagle*, 121 Ohio St.3d 536, 2009-Ohio-1703, 905 N.E.2d 1220.

Accordingly, we sua sponte dismiss Bandarapalli's complaint under Civ.R. 12(B)(6), because he is unable to prove any set of facts entitling him to a writ of prohibition. Costs to Bandarapalli. It is further ordered that the Clerk of the Eight District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Complaint dismissed.

MELODY J. STEWART, JUDGE

PATRICIA A. BLACKMON, P.J., and
LARRY A. JONES, J., CONCUR