[Cite as *State ex rel. Pruitt v. Donnelly*, 2011-Ohio-1252.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION
**No. 95518**

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## STATE OF OHIO, EX REL., MICHAEL JARMAL PRUITT

RELATOR

vs.

## MICHAEL P. DONNELLY, JUDGE ET AL.

RESPONDENT

**JUDGMENT:**
COMPLAINT DISMISSED

Writ of Prohibition and Mandamus
Motion No. 437133
Order No. 442600

RELEASE DATE: March 11, 2011

**FOR RELATOR**

Michael Jarmal Pruitt
No. A474-441
In Propria Persona
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**FOR RESPONDENT**

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Cuyahoga Cunty Prosecutor

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PATRICIA ANN BLACKMON, J.:

**{¶ 1}** On August 6, 2010, the relator, Michael Jarmal Pruitt, commenced this mandamus and prohibition action against the respondents, Judge Michael Donnelly and Judge Burt Griffin. Pruitt maintains that he did not enter guilty pleas to Count 4 and to the three-year firearm specification that accompanied Count 1 in the underlying case, *State of*

*Ohio v. Michael Jarmal Pruitt*, Cuyahoga County Common Pleas Court Case No. CR- 451979 and that, therefore, the respondents lacked jurisdiction to enter convictions and sentences for those charges. Pruitt seeks prohibition to correct the results of these "jurisdictionally unauthorized actions" and mandamus to compel Judge Donnelly to vacate the convictions and sentences for those matters.

**{¶ 2}** On September 1, 2010, the respondents moved to dismiss on the grounds that Judge Griffin is not a proper party and adequate remedy at law. Pruitt filed a brief in opposition on September 24, 2010. On February 4, 2011, Pruitt moved for summary judgment, and the respondents filed their brief in opposition on February 17, 2011. On February 18, 2011, Pruitt filed an amended motion for summary judgment, which makes the same arguments as in his first motion but adds several paragraphs on the importance of a "patent and unambiguous lack of jurisdiction" in a prohibition case. For the following reasons, this court grants the respondents's motion to dismiss, denies Pruitt's motions for summary judgment, and dismisses the complaint for prohibition and mandamus.

Factual and Procedural Background

**{¶ 3}** In the underlying case in May 2004, the Grand Jury indicted Pruitt for one count of attempted murder, two counts for felonious assault, all with three-year firearm specifications and notices of prior conviction, and one count of having a weapon under

disability. By October 2004, the State of Ohio and Pruitt had agreed to a plea bargain under which Pruitt would plead guilty to attempted murder with the three-year firearm specification and having a weapon under disability, and the State would nolle the two felonious assault counts.

**{¶ 4}** The plea hearing occurred on October 13, 2004. Pruitt pleaded guilty to attempted murder. Judge Griffin[1] then asked, "it says that you used a firearm in connection with committing this offense. Do you admit to that?" Pruitt answered, "Yes, sir, your Honor." (Pgs. 21-22 of 10-13-04 Transcript.)[2] The judge, the prosecutor, and the defense then became distracted by the effect Pruitt's federal conviction for bank robbery would have on sentencing. Thus, Pruitt never explicitly said that he pleads guilty to the three-year firearm specification, and the weapon under disability charge is never mentioned. However, the judge twice stated that he accepted the guilty pleas. (Tr. Pgs 26 and 31.) No one objected to the proceedings. On October 19, 2004, the trial court entered a journal entry stating that Pruitt had pleaded guilty to attempted murder as charged and having a weapon under disability as charged in Count 4. In November, the judge sentenced Pruitt to three years on the firearm

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[1] Judge Griffin was the initial trial court judge for the underlying case. Subsequently, Judge Griffin left the bench, and Judge Donnelly assumed the case.

[2] It is undisputed that Pruitt shot the victim multiple times, causing serious injuries, including the loss of an eye.

specification to be served consecutively to eight years on the attempted murder charge, and to five years on the weapon under disability charge to be served concurrent to the attempted murder sentence for a total of eight years.

**{¶ 5}** Pruitt then began a lengthy process of appellate review. In *State v. Pruitt*, Cuyahoga App. Nos. 86707 and 86986, 2006-Ohio-4106, appeal not allowed 111 Ohio St.3d 1494, 2006-Ohio-6171, 857 N.E.2d 1231, Pruitt obtained a delayed appeal of his convictions and sentences and sought review of the denial of a motion to withdraw a guilty plea.[3] This court rejected Pruitt's assignments of error but sua sponte vacated the sentence for the weapon under disability charge and remanded for resentencing pursuant to *State v. Foster,* 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. In *State v. Pruitt,* Cuyahoga App. No. 89405, 2008-Ohio-231, this court reversed and remanded for resentencing on the weapon under disability charge to properly impose postrelease control. In *State v. Pruitt*, Cuyahoga App. No. 91205, 2009-Ohio-859, appeal not allowed 122 Ohio St.3d 1481, 2009-Ohio-3625, 910 N.E.2d 479, this court affirmed Pruitt's latest sentence and the denial of another motion to withdraw guilty plea. This court also denied his App.R. 26(B) application to reopen. *State v. Pruitt*, Cuyahoga App. No. 91205, 2010-Ohio-1573. Despite these multiple appeals and resentencing hearings, Pruitt never raised the issues sub judice.

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[3] Pruitt filed a pro se supplemental brief arguing ineffective assistance of trial counsel and abuse of discretion by the trial court in accepting his guilty plea.

**{¶ 6}** Finally, on March 16, 2010, Pruitt filed a "Civ.R. 60(B) motion for relief from judgment, or in the alternative, Crim.R. 47 motion to vacate void judgment" in which he raised for the first time the issues that the trial court did not have jurisdiction to convict and sentence him on the three-year firearm specification and the weapon under disability charge because he did not actually plead guilty to those charges. The trial court denied the motion on July 6, 2010, and Pruitt appealed on July 22. *State v. Pruitt*, Cuyahoga App. Nos. 95456 and 95457, currently pending before this court.

**{¶ 7}** On February 10, 2011, the State of Ohio moved to dismiss Count 4, the weapon under disability charge. The trial court granted that motion on February 16, 2011. The docket of the underlying case also reveals that on February 22, 2011, Pruitt filed his motion concurring with the State's motion to dismiss Count 4.

Legal Analysis

**{¶ 8}** The principles governing prohibition are well established. Its requisites are (1) the respondent against whom it is sought is about to exercise judicial power, (2) the exercise of such power is unauthorized by law, and (3) there is no adequate remedy at law. *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160, 540 N.E.2d 239. Furthermore, if a petitioner had an adequate remedy, relief in prohibition is precluded, even if the remedy was not used. *State ex rel. Lesher v. Kainrad* (1981), 65 Ohio St.2d 68, 417 N.E.2d 1382, certiorari denied

(1981), 454 U.S. 854, 102 S.Ct. 300, 70 L.Ed.2d 147; Cf. *State ex rel. Sibarco Corp. v. City of Berea* (1966), 7 Ohio St.2d 85, 218 N.E.2d 428, certiorari denied (1967), 386 U.S. 957, 87 S.Ct. 1022, 18 L.Ed.2d 104. Prohibition will not lie unless it clearly appears that the court has no jurisdiction of the cause which it is attempting to adjudicate or the court is about to exceed its jurisdiction. *State ex rel. Ellis v. McCabe* (1941), 138 Ohio St. 417, 35 N.E.2d 571, paragraph three of the syllabus. "The writ will not issue to prevent an erroneous judgment, or to serve the purpose of appeal, or to correct mistakes of the lower court in deciding questions within its jurisdiction." *State ex rel. Sparto v. Juvenile Court of Darke County* (1950), 153 Ohio St. 64, 65, 90 N.E.2d 598. Furthermore, it should be used with great caution and not issue in a doubtful case. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas* (1940), 137 Ohio St. 273, 28 N.E.2d 273, and *Reiss v. Columbus Municipal Court* (App. 1956), 76 Ohio Law Abs. 141, 145 N.E.2d 447. Nevertheless, when a court is patently and unambiguously without jurisdiction to act whatsoever, the availability or adequacy of a remedy is immaterial to the issuance of a writ of prohibition. *State ex rel. Tilford v. Crush* (1988), 39 Ohio St.3d 174, 529 N.E.2d 1245, and *State ex rel. Csank v. Jaffe* (1995), 107 Ohio App.3d 387, 668 N.E.2d 996. However, absent such a patent and unambiguous lack of jurisdiction, a court having general jurisdiction of the subject matter of an action has authority to determine its own jurisdiction. A party challenging the court's

jurisdiction has an adequate remedy at law via appeal from the court's holding that it has jurisdiction. *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage County Court of Common Pleas* (1997), 78 Ohio St.3d 489, 678 N.E.2d 1365, and *State ex rel. Bradford v. Trumbull Cty. Court*, 64 Ohio St.3d 502, 1992-Ohio-116, 597 N.E.2d 116. Moreover, the court has discretion in issuing the writ of prohibition. *State ex rel. Gilligan v. Hoddinott* (1973), 36 Ohio St.2d 127, 304 N.E.2d 382.

**{¶ 9}** Similarly, the requisites for mandamus 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. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 631 N.E.2d 119; *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 295 N.E.2d 659; and *State ex rel. Pressley v. Industrial Commission of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerninghan v. Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787.

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 Center, Inc. v. Court of Appeals for Cuyahoga County* (1990), 56 Ohio St.3d 33, 564 N.E.2d 86. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Commission* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Connole v. Cleveland Board of Education* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850; and *State ex rel. Dayton-Oakwood Press v. Dissinger* (1940), 32 Ohio Law Abs. 308.

**{¶ 10}** Additionally, mandamus may lie to compel a court to vacate its judgment, if the inferior court was without jurisdiction to render such a judgment. *State ex rel. Ballard v. O'Donnell* (1990), 50 Ohio St.3d 182, 553 N.E.2d 650. Prohibition may also issue to correct the results of prior jurisdictionally unauthorized actions, if the court was patently and unambiguously without jurisdiction. *State ex rel. Cordary v. Marshall*, 123 Ohio St.3d 229, 2009-Ohio-4986, 915 N.E.2d 633.

**{¶ 11}** Pruitt poses a clever argument. As to the firearm specification he cites those cases which hold that a separate plea is necessary for a firearm specification and that the mere

statement of "yes" is insufficient to acknowledge the entry of a plea of guilty. *State v. Smith* (Mar 28, 1991), Cuyahoga App. Nos. 58334, 58418 and 58443; and *State v. Davis* (Sept. 7, 2000), Cuyahoga App. No. 76085. As to Count 4, there was never any plea. Pruitt then relies upon *Cleveland v. Wainwright* (Nov. 17, 1977), Cuyahoga App. No. 36623, for the principle that "[a] court may not convict and sentence a defendant where no plea has been entered upon the record." (Slip Op. Pg. 2.)

**{¶ 12}** Pruitt continues that without valid pleas, the judgment is void and open to collateral attack. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, and *State ex rel. Culgan v. Medina Cty. Court of Common Pleas,* 119 Ohio St.3d 535, 2008-Ohio-4609, 895 N.E.2d 805. Pruitt concludes that the corollary to the lack of a valid plea is that the trial court was patently and unambiguously without jurisdiction to enter a conviction and sentence for those charges.

**{¶ 13}** However, under R.C. 2901.11 and 2931.03, the respondents had jurisdiction over the underlying criminal offenses and Pruitt as a criminal defendant. Therefore, they were not patently and unambiguously without jurisdiction. Prohibition will not lie, if the court has basic statutory jurisdiction and an appeal in the ordinary course of law is available. *State ex rel. Adams v. Gusweiler* (1986), 25 Ohio St.2d 53, 495 N.E.2d 16; *State ex rel. Lester v. Court of Common Pleas* (Oct. 28, 1991), Butler App. No. CA91-05-080; and *State ex rel.*

*Cleveland v. Pokorny* (Oct. 12, 2001), Cuyahoga App. No. 79800.

**{¶ 14}** Moreover, appeal is an adequate remedy at law which precludes prohibition and mandamus. Significantly, the procedural postures of *Wainwright*, *Smith*, and *Davis*, the cases upon which Pruitt relies to establish the lack of a valid plea, were appeals. The courts in those cases did not hold that the failure to enter the guilty pleas deprived the trial court of jurisdiction. Rather, in *Wainwright* and *Smith* the court of appeals ruled these omissions were reversible errors.[4]

**{¶ 15}** In *State ex rel. Pesci v. Jones* (Mar. 16, 2000), Cuyahoga App. No. 77464, the relator sought mandamus relief to correct errors in a guilty plea hearing. This court dismissed the writ action, because appeal is an adequate remedy at law to challenge possible errors during a guilty plea hearing and compliance with Crim.R. 11.

**{¶ 16}** Moroever, this court notes that Pruitt is pursuing his adequate remedies at law. When he became aware of these possible omissions, he moved the trial court to vacate a void order. When the trial court denied that motion, he appealed to this court. Therefore, Pruitt has or had adequate remedies at law which preclude relief in either prohibition or mandamus.

**{¶ 17}** Accordingly, this court denies Pruitt's motions for summary judgment, grants

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[4] In *Davis* this court ruled that there was no error and affirmed the judgment of the trial court.

the respondents's motion to dismiss, and dismisses Pruitt's complaint for writs of prohibition and mandamus. Costs assessed against relator. The court directs the Clerk of Court for the Eighth District Court of Appeals to serve notice upon the parties of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Complaint dismissed.

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PATRICIA ANN BLACKMON, JUDGE

KENNETH A. ROCCO, P.J., and
EILEEN A. GALLAGHER, J., CONCUR