

[Cite as *Pruitt v. Donnelly*, 2011-Ohio-944.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 96053

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STATE OF OHIO, MICHAEL JARMAL PRUITT

RELATOR

vs.

MICHAEL P. DONNELLY, JUDGE

RESPONDENT

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JUDGMENT:  
COMPLAINT DISMISSED

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Writ of Prohibition  
Motion No. 439982  
Order No. 442165

RELEASE DATE: March 2, 2011

## **FOR RELATOR**

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## **ATTORNEYS FOR RESPONDENT**

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JAMES J. SWEENEY, J.:

Relator, Michael Jarmal Pruitt, is the defendant in *State v. Pruitt*, Cuyahoga Cty. Court of Common Pleas Case No. CR-451979, which has been assigned to respondent judge. Pruitt complains that respondent ordered him to pay court costs in the sentencing entry in Case No. CR-451979 although respondent did not mention costs during the sentencing hearing. Pruitt argues that respondent lacked the authority to impose court costs and that his sentence is void. Pruitt requests that this court issue a writ of prohibition “to correct Respondent’s patent and unambiguous lack of jurisdiction” and issue a writ of mandamus compelling respondent to remove

“Defendant to pay court costs” from the sentencing entry. Complaint, Ad Damnum Clause.

The criteria for the issuance of a writ of prohibition are well-established. “In order to be entitled to a writ of prohibition, [relator] had to establish that (1) the [respondent] is about to exercise judicial or quasi-judicial power, (2) the exercise of such power is unauthorized by law, and (3) denial of the writ will cause injury to [relator] for which no other adequate remedy in the ordinary course of law exists. *State ex rel. White v. Junkin* (1997), 80 Ohio St.3d 335, 336, 686 N.E.2d 267, 268.” *State ex rel. Wright v. Ohio Bur. of Motor Vehicles*, 87 Ohio St.3d 184, 185, 1999-Ohio-1041, 718 N.E.2d 908. If, however, the respondent court is patently and unambiguously without jurisdiction, the relator need not demonstrate the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, at ¶15.

The requirements 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. Mandamus may compel a court to exercise judgment or discharge a function, but it may not control judicial discretion, even if that discretion is grossly abused. Additionally, mandamus is not a

substitute for appeal and does not lie to correct errors and procedural irregularities in the course of a case. If the relator has or had an adequate remedy, relief in mandamus is precluded – regardless of whether the relator used the remedy. *State ex rel. Smith v. Fuerst*, Cuyahoga App. No. 86118, 2005-Ohio-3829, at ¶4.

Respondent has filed a motion to dismiss and argues that Pruitt has or had an adequate remedy in the ordinary course of the law. Relator has not responded to the motion.

In *State ex rel. Smith v. Ambrose*, Cuyahoga App. No. 94576, 2010-Ohio-2109, this court denied the relator’s request for relief in prohibition to prevent the judge in Smith’s underlying criminal case “from adversely ruling” on his motion for resentencing. Smith also complained that the trial court wrongly imposed court costs. This court denied relief in prohibition and observed that “any issue concerning court costs does not affect the jurisdiction of the trial court and is the proper subject of appeal.” *State ex rel. Smith v. Ambrose*, Cuyahoga App. No. 94576, 2010-Ohio-2109, ¶8 and n.1.

In light of *Smith*, therefore, we must conclude that respondent was not patently and unambiguously without jurisdiction to require Pruitt to pay

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<sup>1</sup> R.C. 2947.23 requires the imposition of court costs as part of the criminal sentence, even if the defendant is indigent. Then the trial court may waive costs, which appears to be what happened in this case.”

costs. Likewise, he has or had an adequate remedy by way of appeal.<sup>2</sup> As a consequence, relief in prohibition and mandamus is not appropriate.

Accordingly, respondent's motion to dismiss is granted. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Complaint dismissed.

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JAMES J. SWEENEY, JUDGE

MELODY J. STEWART, P.J., and  
SEAN C. GALLAGHER, J., CONCUR

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<sup>2</sup> Currently, Pruitt has two appeals pending from rulings received for filing on July 6, 2010 in Case No. CR-451979: Case No. 95456, "DEFENDANT'S CIV. R. 60(B) MOTION FOR RELIEF FROM JUDGEMENT, OR IN THE ALTERNATIVE, MOTION TO VACATE VOID JUDGEMENT IS DENIED."; and Case No. 95457, "NUNC PRO TUNC ENTRY AS OF AND FOR 03/05/2008. DEFENDANT'S MOTION TO AMEND JOURNAL ENTRY IS DENIED." and "NUNC PRO TUNC ENTRY AS OF AND FOR 04/07/2008. DEFENDANT'S MOTION TO SUPPLEMENT MOTION TO AMEND JOURNAL IS DENIED."