

[Cite as *Leonard v. Russo*, 2012-Ohio-2397.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 98106

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**RICHARD LENARD**

PETITIONER

vs.

**JUDGE JOHN J. RUSSO**

RESPONDENT

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**JUDGMENT:  
WRIT DISMISSED**

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Writ of Prohibition  
Motion No. 453945  
Order No. 454691

**RELEASE DATE:** May 25, 2012

**FOR PETITIONER**

Richard Lenard  
Inmate No. 570-627  
Noble Correctional Institution  
15708 McConnellsville Road  
Caldwell, Ohio 43724

**ATTORNEYS FOR RESPONDENT**

William D. Mason  
Cuyahoga County Prosecutor

By: James E. Moss  
Assistant County Prosecutor  
Justice Center - 9<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

KENNETH A. ROCCO, J.:

{¶1} On March 16, 2012, the petitioner, Richard Lenard, commenced this prohibition action against the respondent, Judge John J. Russo, to compel the judge to vacate Lenard's conviction and sentence for violating a temporary protection order in the underlying case, *State v. Lenard*, Cuyahoga C.P. No. CR-508101. On April 5, 2012, the respondent judge moved to dismiss, and Lenard filed a brief in opposition on April 16, 2012. For the following reasons, this court grants the respondent's motion to dismiss.

#### FACTUAL AND PROCEDURAL BACKGROUND

{¶2} In the underlying case in early 2008, the grand jury indicted Lenard on one count of kidnapping in violation of R.C. 2905.01(A)(5), a first degree felony; one count of violation of a temporary protection order in violation of R.C. 2919.27 (A)(1), a third degree felony; one count of domestic violence in violation of R.C. 2919.25(A), a first degree misdemeanor; and one count of disrupting public service in violation of R.C. 2909.04(A)(1), a fourth degree felony. Pursuant to R.C. 2919.27(B)(4), if the offender violates a protection order while committing a felony offense, violating the protection order is a third degree felony. Otherwise, it is a first degree misdemeanor. The indictment for this offense includes the "furthermore clause" that "said violation occurred during the commission of a felony offense."

{¶3} Lenard, represented by counsel, and the state entered into a plea bargain. Lenard would plead guilty to the felony violation of a temporary protection order count as charged and the misdemeanor domestic violence charge, and the state would nolle the

felony kidnapping and disrupting public service charges. During the plea hearing the prosecutor in summarizing the agreement stated that the violation of the temporary protection order was a third degree felony that carried the possibility of incarceration from one to five years in yearly increments and a discretionary fine of up to \$10,000. Defense counsel concurred with the prosecutor's summation and also stated that he had discussed the plea bargain with Lenard, including the possible sentences, and that he thought the plea would be knowingly, voluntarily, and intelligently made. (Tr. 3-4.)

{¶4} The respondent judge then fulfilled the requirements of Crim.R. 11. This included stating the violation of a temporary protection order is a third degree felony and carries the possible term of incarceration of one to five years and a \$10,000 fine. When the judge asked if he understood the penalty, Lenard replied, "Yes." (Tr. 7.) After confirming with the lawyers that he had complied with the requirements of Crim.R. 11, the respondent judge asked Lenard how do you plead to Count 2 of the indictment a violation of a temporary protection order, a felony of the third degree, and Lenard replied, "Guilty." (Tr. Pg. 9.)<sup>1</sup>

## LEGAL ANALYSIS

{¶5} 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

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<sup>1</sup>The judge initially imposed community control sanctions. When Lenard violated those sanctions, the judge imposed a prison term.

law. *State ex rel. Largent v. Fisher*, 43 Ohio St.3d 160, 540 N.E.2d 239 (1989). Furthermore, if a petitioner had an adequate remedy, relief in prohibition is precluded, even if the remedy was not used. *State ex rel. Leshner v. Kainrad*, 65 Ohio St.2d 68, 417 N.E.2d 1382 (1981). Prohibition will not lie unless it clearly appears that the court has no jurisdiction of the cause that it is attempting to adjudicate or the court is about to exceed its jurisdiction. *State ex rel. Ellis v. McCabe*, 138 Ohio St. 417, 35 N.E.2d 571 (1941), 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 Cty.*, 153 Ohio St. 64, 65, 90 N.E.2d 598 (1950). 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*, 137 Ohio St. 273, 28 N.E.2d 641 (1940); and *Reiss v. Columbus Mun. Court*, 76 Ohio Law Abs. 141, 145 N.E.2d 447 (10th Dist.1956).

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*, 39 Ohio St.3d 174, 529 N.E.2d 1245 (1988). 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 an appeal from the court’s holding that it has jurisdiction. *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas*, 78

Ohio St.3d 489, 678 N.E.2d 1365 (1997). Moreover, the court has discretion in issuing the writ of prohibition. *State ex rel. Gilligan v. Hoddinott*, 36 Ohio St.2d 127, 304 N.E.2d 382 (1973).

{¶6} Lenard argues that when the state nolleed the two felony charges of kidnapping and disrupting public service, it nullified the requisite commission of a felony necessary to maintain violating a temporary protection order as a felony. Unless he was convicted of a felony, he could not be guilty of violating a protection order as a felony. It would have to be a misdemeanor. Lenard continues that because he was convicted of a felony when the necessary prerequisite was absent, the trial judge violated the statutory requirements and the conviction is void. Because the conviction is void, the trial judge exceeded his jurisdiction, and prohibition will lie to correct the results of prior jurisdictionally unauthorized actions. Thus, Lenard concludes that the entire conviction for violating a temporary protection order should be vacated.

{¶7} However, R.C. 2931.03 vests the common pleas court with original jurisdiction of all crimes and offenses. Thus, the respondent judge had basic statutory jurisdiction to determine the case; he was not patently and unambiguously without jurisdiction to adjudicate the case, even if there were errors or irregularities.

{¶8} Moreover, the court entertains doubt as to whether the conviction for violating a temporary protection order as a felony was either void or erroneous. A guilty plea admits the facts well pleaded in the indictment, and dispenses with the need of proving them. *State v. Craig*, 49 Ohio St. 415, 30 N.E. 1120 (1892); *State v. Greathouse*, 158

Ohio App.3d 135, 2004-Ohio-3402, 814 N.E.2d 502 (2d Dist.); and *State v. Moncrief*, 8th Dist. No. 85479, 2005-Ohio-4812. Thus, when Lenard pleaded guilty to violating the protection order as a third degree felony, he admitted that he violated the order during the commission of a felony, and the state did not need to prove that or have a predicate conviction. At the very least, given the procedural posture of the case, i.e., a guilty plea, the issue of whether a predicate conviction is necessary presents a possible error, properly reviewed on appeal, and not a lack of jurisdiction. Therefore, this court declines to issue the writ of prohibition because it has doubts about the validity of Lenard's argument and because he has or had an adequate remedy at law.

{¶9} Accordingly, this court grants the respondent judge's motion to dismiss. Petitioner to pay costs. This court directs the Clerk of the Eighth District Court of Appeals to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶10} Complaint dismissed.

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KENNETH A. ROCCO, JUDGE

LARRY A. JONES, SR., P.J., and  
COLLEEN CONWAY COONEY, J., CONCUR