[Cite as *State ex rel. Carr v. Saffold*, 2015-Ohio-531.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102358

STATE OF OHIO, EX REL.,
REZATA C. CARR

PETITIONER

vs.

JUDGE SHIRLEY S. SAFFOLD

RESPONDENT

JUDGMENT:
"PETITION FOR WRIT OF ERROR" DISMISSED

Petition for Writ of Error
Motion No. 481679
Order No. 482133

RELEASE DATE: February 11, 2015

PETITIONER

Rezata C. Carr, pro se
Inmate #683-630
P.O. Box 540
Saint Clairsville, Ohio 43950

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
James E. Moss
Assistant County Prosecutor
The Justice Center - 9th Floor
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MARY EILEEN KILBANE, J.:

{¶1} Rezata C. Carr has filed a "petition for writ of error" in an attempt to require Judge Shirley Strickland Saffold to reconsider the denial of a motion to withdraw a plea of guilty filed in *State v. Carr*, Cuyahoga C.P. No. CR-13-572866-A. Carr's request for a "writ of error" is premised upon the claims that: (1) Judge Saffold did not provide him with a fair and full hearing with regard to a motion to withdraw a plea of guilty; (2) trial counsel failed to effectively assist in withdrawing the plea of guilty; and (3) failure of Judge Strickland to inquire into the basis for a motion to disqualify appointed counsel. Judge Saffold has filed a motion to dismiss, which we grant for the following reasons.

{¶2} Initially, we find that Carr has failed to state a claim upon which relief can be granted through his request for a "writ of error." *State ex rel. Peeples v. Anderson*, 73 Ohio St.3d 559, 1995-Ohio-335, 653 N.E.2d 371. A "writ of error," also known as a "writ of error coram nobis," is a writ directed to a court for review of its own judgment and predicated on alleged errors of fact. *Perotti v. Stine*, 113 Ohio St.3d 312, 2007-Ohio-1957, 865 N.E.2d 50. *See also Black's Law Dictionary* 338 (7th Rev.Ed.1999). Ohio, however, does not recognize the common law "writ of error coram nobis." *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), citing *State v. Hayslip*, 90 Ohio St. 199, 170 N.E. 335 (1914).

{¶3} Even if this court were to treat Carr's petition for a "writ of error" as an action in mandamus, Carr still fails to state a claim upon which relief can be granted. The issue of the denial of Carr's motion to withdraw a plea of guilty was previously addressed upon direct appeal and found to be without merit. This court, in *State v. Coley-Carr*, 8th Dist. Cuyahoga No. 101611, 2014-Ohio-5556, held:

> Even if we were to review his motion to withdraw the guilty plea, under the standard of Crim.R. 32.1, we would find no manifest injustice to be corrected by the trial court. "Manifest injustice relates to some fundamental flaw in the proceedings which result[s] in a miscarriage of justice or is inconsistent with the demands of due process." *State v. Ruby*, 9th Dist. Summit No. 23219, 2007-Ohio-244, ¶ 11." "Under the manifest injustice standard, a postsentence withdrawal motion is allowable only in extraordinary cases." *State v. Montgomery*, 2013-Ohio-4193, 997 N.E.2d 579, ¶ 61 (8th Dist.), citing *State v. Smith*, 49 Ohio St.2d 261, 264, 361 N.E.2d 1324 (1977).
>
> Here, appellant pleaded guilty when a jury trial was imminent. After the imminence of a trial was passed, he sought to withdraw his plea, claiming his plea was not knowing or intelligent. However, he apparently did not raise the issue at the subsequent sentencing hearing, because the sentencing entry recited the fact that appellant pleaded guilty to rape. The sentencing entry also reflected that appellant was represented by counsel and personally addressed the trial court. As the sentencing transcript is not part of the record, we presume regularity of the proceeding. Notably, appellant did not file a direct appeal of his conviction. In the instant postconviction proceeding, appellant presented no credible evidence, other than a purported self-serving affidavit, that he was mistaken at the plea hearing about the charge he pleaded to.
>
> Under these circumstances, appellant fails to demonstrate manifest injustice to be correct by the trial court. The trial court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.

Id. at ¶ 11.

{¶4} Thus, any claim with regard to the issue of the trial court's denial of the motion to withdraw the plea of guilty is barred from further consideration by the doctrine of res judicata. *Perry*. *See also State ex rel. Sneed v. Anderson*, 114 Ohio St.3d 11, 2007-Ohio-2454, 866 N.E.2d 1084; *Haynes v. Voorhies*, 110 Ohio St.3d 243, 2006-Ohio-4355, 852 N.E.2d 1198; *State ex rel. Mora v. Wilkinson*, 105 Ohio St.3d 272, 2005-Ohio-1509, 824 N.E.2d 1000.

{¶5} Finally, the issues of ineffective assistance of trial counsel and failure of Judge Saffold to inquire into the basis for a motion to disqualify appointed trial counsel may not be addressed through an original action because Carr possesses or possessed adequate remedies at law through an appeal or other postconviction remedies. *State ex rel. Hughley v. McMonagle*,

121 Ohio St.3d 536, 2009-Ohio-1703, 905 N.E.2d 1220; *State ex rel. Smith v. McDonnell*, 8th Dist. Cuyahoga No. 95786, 2010-Ohio-6035. Once again, Carr has failed to state a claim upon which relief can be granted. *Peeples*, 73 Ohio St.3d 559, 1995-Ohio-335, 653 N.E.2d 371

{¶6} Accordingly, we grant Judge Saffold's motion to dismiss. Costs to Carr. 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).

{¶7} Petition dismissed.

MARY EILEEN KILBANE, JUDGE

LARRY A. JONES, SR., P.J., and
MARY J. BOYLE, J., CONCUR