

[Cite as *State ex rel. Peterson v. McClelland*, 2016-Ohio-1549.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103918

STATE OF OHIO, EX REL.
DAMIEN L. PETERSON

RELATOR

vs.

JUDGE ROBERT C. MCCLELLAND

RESPONDENT

JUDGMENT:
WRITS DENIED

Writs of Prohibition and Mandamus
Motion No. 492618
Order No. 494208

RELEASE DATE: April 8, 2016

FOR RELATOR

Damien L. Peterson
Inmate No. 503-884
Richland Correctional Institution
1001 Olivesburg Road
Mansfield, Ohio 44905

ATTORNEYS FOR RESPONDENT

Timothy J. McGinty
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY EILEEN KILBANE, P.J.:

{¶1} Damien L. Peterson has filed a complaint for a writ of prohibition and a writ of mandamus. Through his request for a writ of prohibition, Peterson seeks to prevent Judge Robert C. McClelland from exercising any jurisdiction in *State v. Peterson*, Cuyahoga C.P. No. CR-05-471306. Peterson, through his request for a writ of mandamus, seeks to compel Judge McClelland to comply with the appellate judgment rendered by this court, in *State v. Peterson*, 8th Dist. Cuyahoga No. 101727, 2015-Ohio-1152, which vacated the granting of Peterson's motion for judicial release and remanded for a new hearing. In essence, Peterson argues that he is entitled to his immediate release from prison. Judge McClelland has filed a motion for summary judgment, which we grant for the following reasons.

Facts

{¶2} On April 26, 2006, Peterson was convicted of one count of aggravated robbery (R.C. 2911.01), one count of felonious assault (R.C. 2903.11), and one count of having weapons while under disability (R.C. 2923.13).¹ On May 1, 2006, Peterson was sentenced to serve a prison term of 15 years. Peterson appealed his conviction and sentence.

¹Each count of aggravated robbery and felonious assault contained a one-year firearm specification (R.C. 2941.141), a three-year firearm specification (R.C. 2941.145), a notice of prior conviction, and a repeat violent offender specification (R.C. 2929.01(CC)).

{¶3} On appeal, this court in *State v. Peterson*, 8th Dist. Cuyahoga No. 88248, 2007-Ohio-1837, affirmed Peterson’s conviction for the offenses of aggravated robbery, felonious assault, and having weapons while under disability, but found that Peterson was improperly sentenced on the repeat violent offender specifications and modified the sentence to 12 years and remanded to the trial court for correction of sentencing entry.

{¶4} On May 8, 2014, Peterson filed a motion for judicial release. On July 17, 2014, Judge McClelland granted Peterson judicial release, imposed community control sanctions, and reserved the right to reimpose the remainder of the prison sentence upon violation of the terms of community control sanctions. On July 24, 2014, the state of Ohio appealed the granting of judicial release. This court, in *Peterson*, 8th Dist. Cuyahoga No. 101727, 2015-Ohio-1152, reversed the judgment granting judicial release because the necessary findings were not made by the trial court as mandated by R.C. 2929.20(J).

{¶5} On April 6, 2015, Judge McClelland issued a judgment entry that continued community control sanctions for Peterson on the conditions that he attend “AA/NA” meetings and stay in compliance with all conditions of day programming. On May 8, 2015, Peterson was found to be in violation of community control sanctions, which resulted in the termination of community control and the order that he serve the remainder of his prison sentence.

{¶6} On August 31, 2015, Peterson filed a complaint for a writ of mandamus with the Supreme Court of Ohio. Peterson sought an order to compel Judge McClelland to vacate the order of May 8, 2015, that terminated community control sanctions and imposed the remainder of his prison sentence, and to compel Judge McClelland to make the required findings pursuant to R.C. 2929.20(J) in order to determine whether he was entitled to judicial release. On November 10, 2015, the Supreme Court of Ohio denied Peterson's request for a writ of mandamus and dismissed his complaint. *See State ex rel. Peterson v. McClelland*, 143 Ohio St.3d 1540, 2015-Ohio-4633, 40 N.E.2d 1178. On December 17, 2015, Peterson filed his complaint for a writ of prohibition and a writ of mandamus with this court.

Legal Analysis

{¶7} A writ of prohibition is designed to prevent a tribunal from proceeding in a matter in which it is not authorized to hear and determine, or in which it seeks to usurp or exercise jurisdiction with which it has not been invested by law. *State ex rel. Doe v. Tracy*, 51 Ohio App.3d 198, 555 N.E.2d 674 (12th Dist.1988).

{¶8} It is well established that the purpose of a writ of prohibition is to prevent inferior courts and tribunals from usurping jurisdiction beyond that with which they have been granted by law. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 686 N.E.2d 267 (1997). Where a court possesses general subject-matter jurisdiction over a pending action, a writ of prohibition will not issue to prevent an error of law. *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181; *State ex rel. Winnefeld v.*

Court of Common Pleas of Butler Cty., 159 Ohio St. 225, 112 N.E.2d 27 (1953). If a court patently and unambiguously lacks general subject-matter jurisdiction, a writ of prohibition will issue to correct the results of prior unauthorized actions. *State ex rel. Cordray v. Marshall*, 123 Ohio St.3d 229, 2009-Ohio-4986, 915 N.E.2d 633. However, if a court does not patently and unambiguously lack general subject-matter jurisdiction, prohibition will not issue and the issue of jurisdiction must be addressed through an appeal. *State ex rel. Bradford v. Trumbull Cty. Court*, 64 Ohio St.3d 502, 597 N.E.2d 116 (1992); *State ex rel. Pearson v. Moore*, 48 Ohio St.3d 37, 548 N.E.2d 945 (1990).

{¶9} In *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, the Supreme Court of Ohio examined in detail the subject of jurisdiction and held that:

The general term “jurisdiction” can be used to connote several distinct concepts, including jurisdiction over the subject matter, jurisdiction over the person, and jurisdiction over a particular case. *Id.* at ¶ 11-12. The often unspecified use of this polysemic word can lead to confusion and has repeatedly required clarification as to which type of “jurisdiction” is applicable in various legal analyses. *See, e.g., id.* at ¶ 33; *Barnes v. Univ. Hosps. of Cleveland*, 119 Ohio St.3d 173, 2008-Ohio-3344, 893 N.E.2d 142, ¶ 27; *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, ¶ 10-16. * * *

Subject-matter jurisdiction is the power of a court to entertain and adjudicate a particular class of cases. *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). A court’s subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 1998-Ohio-275, 701 N.E.2d 1002 (1998); *Handy v. Ins. Co.*, 37 Ohio St. 366, 370 (1881). A court’s jurisdiction over a particular case refers to the court’s authority to proceed or rule on a case that is within the court’s subject-matter jurisdiction. *Pratts* at ¶ 12, [102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992]. This latter jurisdictional category

involves consideration of the rights of the parties. If a court possesses subject-matter jurisdiction, any error in the invocation or exercise of jurisdiction over a particular case causes a judgment to be voidable rather than void. *Id.* at ¶ 12.

Kuchta at ¶ 18 - 23.

{¶10} In the case sub judice, we find that Judge McClelland has original jurisdiction over all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas. R.C. 2901.121, 2931.03. Judge McClelland sits as an elected judge of the Common Pleas Court of Cuyahoga County. Judge McClelland is cloaked with the necessary subject matter jurisdiction to hear and determine whether Peterson has violated the terms of his community control and to re-impose the remainder of his prison sentence, which prevents this court from issuing a writ of prohibition. *State ex rel. White v. Junkin, supra*; *State ex rel. Enyart v. O'Neil*, 71 Ohio St.3d 655, 646 N.E.2d 1110 (1995).

{¶11} In addition, we find that Peterson is not entitled to a writ of mandamus based upon the application of the doctrine of res judicata. The doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel. Claim preclusion prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action. Where a claim could have been litigated in the previous suit, claim preclusion also bars subsequent actions on that matter. Issue preclusion, on the other hand, serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction

in a previous action between the same parties or their privies. Issue preclusion applies even if the causes of action differ. *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395, 692 N.E.2d 140 (1998); *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 653 N.E.2d 226 (1995).

{¶12} Herein, Peterson has already litigated the claim that Judge McClelland must be compelled to comply with the appellate judgment rendered by this court in *State v. Peterson*, 8th Dist. Cuyahoga No. 101727, 2015-Ohio-1152, by making the required findings at a hearing to determine if Peterson was eligible for release. The aforesaid claim was litigated through Peterson's complaint for a writ of mandamus as filed with the Supreme Court of Ohio in *Peterson v. McClelland*, 143 Ohio St.3d 1540, 2015-Ohio-4633, 40 N.E.3d 1178. Peterson is not permitted to relitigate a claim previously addressed and found to be without merit. The doctrine of res judicata prevents relitigation of the claim that Judge McClelland must be compelled to make the required findings per R.C. 2929.20(J) and determine whether Peterson is eligible for judicial release. *Ashe v. Swenson*, 397 U.S. 436, 445, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970); *State v. Cargo*, 93 Ohio App.3d 621, 639 N.E.2d 801 (1994); *State v. Day*, 8th Dist. Cuyahoga No. 67767, 1996 Ohio App. LEXIS 44847 (Nov. 2, 1995).

{¶13} It must also be noted that requiring Judge McClelland to conduct a hearing to determine whether Peterson is eligible for judicial release and to make required findings would constitute a vain act because it has already been determined that Peterson violated the terms of his community control and is now serving the balance of his original

prison sentence. *State ex rel. Strothers v. Turner*, 79 Ohio St.3d 272, 680 N.E.2d 1238 (1997).

{¶14} Finally, Peterson has failed to establish that he has exhausted all other legal remedies prior to seeking a writ of mandamus from this court. *State ex rel. Walker v. Lancaster City School Dist. Bd. of Edn.*, 79 Ohio St.3d 216, 680 N.E.2d 993 (1997); *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). *See also State ex rel. Elkins v. Fais*, Slip Opinion No. 2015-Ohio-2873; *Turner v. Dept. of Rehab. & Corr.*, 144 Ohio St.3d 377, 2015-Ohio-2833, 43 N.E.3d 435; *State ex rel. Walker v. State*, 142 Ohio St.3d 365, 2015-Ohio-1481, 30 N.E.3d 947; *State ex rel. Turner v. Corrigan*, 142 Ohio St.3d 303, 2015-Ohio-980, 29 N.E.3d 962; *State ex rel. Nickleson v. Mayberry*, 131 Ohio St.3d 416, 2012-Ohio-1300, 965 N.E.2d 1000. Peterson possesses or possessed an adequate remedy at law through an appeal of the judgment that revoked community control and reinstated the balance of the original prison sentence.

{¶15} Accordingly, we grant Judge McClelland's motion for summary judgment. Costs to Peterson. 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).

{¶16} Writs denied.

MARY EILEEN KILBANE, PRESIDING JUDGE

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