

[Cite as *State ex rel. Jackson v. Ambrose*, 2016-Ohio-5937.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104592

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**STATE OF OHIO, EX REL.  
THEODORE R. JACKSON**

RELATOR

vs.

**JUDGE DICK AMBROSE**

RESPONDENT

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**JUDGMENT:  
WRITS DENIED**

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Writs of Mandamus and Prohibition  
Motion No. 497998  
Order No. 499309

**RELEASE DATE:** September 19, 2016

**FOR RELATOR**

Theodore R. Jackson, pro se  
Inmate No. A590-406  
Lake Erie Correctional Institution  
P.O. Box 8000  
Conneaut, Ohio 44030

**ATTORNEYS FOR RESPONDENT**

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

MARY J. BOYLE, J.:

{¶1} Theodore R. Jackson has filed an amended complaint for writs of mandamus and prohibition. On June 10, 2016, Jackson filed his original complaint for a writ of mandamus and prohibition through which he seeks an order from this court that requires Judge Dick Ambrose (“Judge Ambrose”) to vacate the sentence of incarceration imposed in *State v. Jackson*, Cuyahoga

C.P. No. CR-81-162099 based upon the argument that he was never sentenced in open court. On July 22, 2016, Jackson added the Cuyahoga County Clerk of Courts, Nailah Byrd (“Byrd”), as a party to his original complaint for writs of mandamus and prohibition.

Jackson seeks a writ of mandamus that requires Byrd transmit the trial court record maintained in CR-81-162099 to the pending appeals of *State v. Jackson*, 8th Dist. Cuyahoga Nos. 104068 and 104450 as mandated by App.R. 9(A). Jackson also seeks, through prohibition, an “order to prohibit the clerk of [c]ourts from not filing legal document received from Theodore Jackson the same day they are received.” Judge Ambrose and Byrd have filed a joint motion for summary judgment that we grant for the following reasons.

{¶2} Initially, we find that Jackson is not entitled to a writ of prohibition against Judge Ambrose. As a sitting judge of the Cuyahoga County Court of Common Pleas, either Judge Ambrose or his predecessor judge possessed jurisdiction over Jackson’s criminal proceedings under R.C. 2931.03. *State ex rel. Pruitt v. Donnelly*, 129 Ohio

St.3d 498, 2011-Ohio-4203, 954 N.E.2d 117. Any error in sentencing does not deprive a trial court of subject-matter jurisdiction. *State ex rel. West v. McDonnell*, 8th Dist. Cuyahoga No. 99086, 2013-Ohio-1044.

{¶3} In addition, Jackson is not entitled to a writ of mandamus with regard to his claim that Judge Ambrose is required to vacate the sentence imposed in CR-81-162099 and conduct a new sentencing hearing. A writ of mandamus will not issue if there exists a plain and adequate remedy in the ordinary course of the law. *State ex rel. Ullman v. Hayes*, 103 Ohio St.3d 405, 2004-Ohio-5469, 816 N.E.2d 245. Any sentencing errors, that are committed by a court possessing proper jurisdiction over a criminal matter, may not be remedied through an extraordinary writ. *See generally Smith v. Warren*, 89 Ohio St.3d 467, 732 N.E.2d 992 (2000) (prohibition); *Majoros v. Collins*, 64 Ohio St.3d 442, 596 N.E.2d 1038 (1992) (habeas corpus); *State ex rel. Corrigan v. Lawther*, 39 Ohio St.3d 157, 529 N.E.2d 1377 (1988) (mandamus).

{¶4} A review of the docket maintained in CR-81-162099 clearly demonstrates that Jackson has availed himself of adequate remedies in the ordinary course of the law, e.g., postconviction relief and appeals, with regard to his claimed sentencing errors. The following motions and appeals were filed by Jackson:

- 1) January 7, 2016 — trial court's denies Jackson's motion for resentencing via House Bill 86;
- 2) February 1, 2016 — appeal filed in 8th Dist. Cuyahoga No. 104068 from order of January 6, 2016, that denied Jackson's motion for resentencing;

3) April 6, 2016 — trial court denies Jackson’s motion for relief from judgment via Civ.R. 60 and motion for reconsideration;

4) May 6, 2016 — appeal filed in 8th Dist. Cuyahoga No. 104450 from order of April 6, 2016, that denied Jackson’s motion for relief from judgment via Civ.R. 60 and motion for reconsideration;

5) June 6, 2016 — trial court denies Jackson’s motion for nunc pro tunc journal entry of “adjournment sine die” and motion to vacate void sentence of 6-19-81;

6) June 22, 2016 — appeal filed in 8th Dist. Cuyahoga No. 104645 from order of June 6, 2016, that denied Jackson’s motion for nunc pro tunc journal entry of adjournment sine die and motion to vacate void sentence of 6-19-81.

{¶5} Jackson has or had numerous adequate remedies in the ordinary course of the law that addressed or could have addressed the issue of a defective sentence. *State ex rel. Ward v. Reed*, 141 Ohio St.3d 50, 2014-Ohio-4512, 21 N.E.3d 303; *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 673 N.E.2d 1281 (1997), and *State ex rel. Sevayega v. McMonagle*, 122 Ohio St.3d 54, 2009-Ohio-2367, 907 N.E.2d 1180. Jackson is not entitled to a writ of mandamus via his claim of a defective sentence.

{¶6} Further, we find that Jackson is not entitled to either a writ of mandamus or prohibition against Byrd. The sworn affidavit of James Boyle, Manager of the Criminal Division of the Cuyahoga County Clerk of Courts, exhibit F as attached to the joint motion for summary judgment, clearly establishes that the trial court record in

CR-81-162099 was transmitted and filed in 8th Dist. Cuyahoga Nos. 104068 and 104450 as mandated by App.R. 9.<sup>1</sup> Jackson's request for a writ of mandamus, to require Byrd to transmit the trial court record, is moot. *State ex rel. Fontanella v. Kantos*, 117 Ohio St.3d 514, 2008-Ohio-1431, 885 N.E.2d 220; *State ex rel. Worley v. Sutula*, 8th Dist. Cuyahoga No. 103923, 2016-Ohio-2730.

{¶7} Finally, to be entitled to a writ of prohibition, Jackson must establish that: 1) the respondent is about to exercise judicial or quasi-judicial power; 2) the exercise of that power is not authorized by law; and 3) the denial of the writ will cause injury for which no other adequate remedy in the ordinary course of the law exists. *State ex rel. Henry v. McMonagle*, 87 Ohio St.3d 543, 721 N.E.2d 1051 (2000). Jackson has failed to establish that Byrd is exercising judicial or quasi-judicial power, which generally is defined as “the power to hear and to determine controversies.” *State ex rel. Hensley v. Nowak*, 52 Ohio St.3d 98, 556 N.E.2d 171 (1990). *See also State ex rel. Recker v. Putnam Cty. Clerk of Courts*, 87 Ohio St.3d 235, 718 N.E.2d 1290 (1999). Jackson's failure to establish that Byrd is exercising any judicial or quasi-judicial power through the ministerial act of docketing a motion prevents this court from issuing a writ of prohibition.

{¶8} Accordingly, we grant the joint motion for summary judgment filed by Judge Ambrose and Byrd. Costs to Jackson. The court directs the clerk of courts to

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<sup>1</sup>James Boyle is not related to Judge Mary J. Boyle, a sitting judge of the Eighth District Court of Appeals.

serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶9} Writs denied.

MARY J. BOYLE, JUDGE

MELODY J. STEWART, P.J., and  
ANITA LASTER MAYS, J., CONCUR