

[Cite as *State v. Jackson*, 2017-Ohio-107.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 104645**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**THEODORE R. JACKSON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-81-162099-ZA

**BEFORE:** Laster Mays, J., Jones, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** January 12, 2017

**FOR APPELLANT**

Theodore R. Jackson  
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**ATTORNEYS FOR APPELLEE**

Michael C. O'Malley  
Cuyahoga County Prosecutor

By: Frank Romeo Zeleznikar  
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ANITA LASTER MAYS, J.:

## **I. Introduction**

{¶1} Defendant-appellant Theodore R. Jackson (“Jackson”) appeals, pro se, the trial court’s denial of his: (1) motion for relief from judgment pursuant to Civ.R. 60, alleging fraud, and (2) motion for nunc pro tunc journal entry of adjournment “sine die,” to vacate a void judgment and a void sentence. We affirm the trial court’s decision on the basis of *res judicata*. We further warn Jackson that his conduct, through the continued filing of appeals and original actions, may result in his being declared a vexatious litigator pursuant to Loc.App.R. 23(A), promulgated to exercise this court’s inherent power to prevent abuse of the appellate process.

## **II. Facts and Procedural History**

### **A. Prior Appeals and Petitions.**

{¶2} In 1981, Jackson was convicted of aggravated burglary (R.C. 2911.01), in Cuyahoga C.P. No. CR-81-162099-ZA. Jackson was sentenced the same day to a term of seven to 25 years, to run consecutively with a sentence for parole violations. Jackson was also advised of his rights under Crim.R. 32(A)(2). His initial appeal did not challenge the propriety of the sentence, and the conviction was affirmed. *State v. Jackson*, 8th Dist. Cuyahoga No. 44093, 1982 Ohio App. LEXIS 15381 (June 3, 1982) (“*Jackson I*”).<sup>1</sup>

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<sup>1</sup> On September 20, 2016, this court denied Jackson’s delayed App.R. 26(A)

{¶3} *State v. Jackson*, 8th Dist. Cuyahoga No. 46251, 1983 Ohio App. LEXIS 13789 (Sept. 29, 1983) (“*Jackson II*”), addressed an unsuccessful petition for postconviction relief, and this court affirmed the trial court. The petition did not raise the sentencing issue.

{¶4} A “motion for sentence via House Bill 86” was filed December 28, 2015, requesting resentencing under H.B. 86 due to the trial court’s failure to hold a sentencing hearing. The trial court denied the motion as meritless, noting that the sentencing entry documenting the hearing refuted Jackson’s claim.

{¶5} On January 20, 2016, Jackson filed a combined motion for reconsideration of the H.B. 86 motion and for relief from judgment under Civ.R. 60(B), arguing that the judgment was void because the sentencing entry lacked a judicial signature and court filing stamp. While these motions were pending, Jackson filed a notice of appeal, ostensibly to protect the tolling of the appeal period for the pending H.B. 86 reconsideration motion.

{¶6} On April 6, 2016, the trial court denied reconsideration and also rejected the request for resentencing under H.B. 86:

The certified copy of the journal entry of conviction attached to the state’s response to defendant’s motion for relief (Exhibit A), clearly shows the judge’s signature. This journal entry bears the notation that it was received for filing by the clerk of courts on June 19, 1981 and was also recorded at volume 439, page 605.

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application for reconsideration.

{¶7} The appeals of the H.B. 86 and Civ.R. 60(B) motion denials were consolidated in *State v. Jackson*, 8th Dist. Cuyahoga Nos. 104068 and 104450, 2016-Ohio-7308 (“*Jackson III*”):<sup>2</sup>

Appellant raises several assignments of error arguing that because the journal entry of sentence evidencing his conviction and sentence for aggravated robbery lacks the signature of a judge and file stamp from the clerk of courts, the trial court erred in denying his various pleadings for sentencing, and he was never properly sentenced. After a thorough review of the record and law, this court affirms.

\* \* \*

[T]he record in this case contains a journal entry of sentence that is both signed by the trial judge and time stamped by the clerk. The entry submitted to the trial court by the state more clearly demonstrates the trial court signed the entry and the stamp from the clerk’s office is more legible. However, the entry that appears in the record also bears a faint stamp near the upper right-hand corner of the document, and a faint signature. Therefore, appellant’s arguments about the invalidity of this entry is belied by the record. This court does not find that appellant’s entry of sentence is missing any requirement set forth in Crim.R. 32(C). Accordingly, appellant’s entry of sentence is valid, and res judicata bars appellant’s claims to be sentenced under H.B. 86.

*Id.* at ¶ 1 and 15.

{¶8} During the pendency of *Jackson III*, this court denied Jackson’s petitions in *State v. Jackson*, 8th Dist. Cuyahoga No. 104592, 2016-Ohio-5937 (“*Jackson IV*”). Jackson sought writs of mandamus and prohibition requiring that the trial judge vacate Jackson’s sentence for failure to hold an open sentencing hearing.<sup>3</sup> Jackson also

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<sup>2</sup> Jackson’s motion for reconsideration was denied by this court on November 28, 2016.

<sup>3</sup> Jackson’s motion for reconsideration was denied by this court on October

requested that mandamus issue requiring that the common pleas court clerk transmit a copy of the trial record to this court for purposes of the *Jackson III* appeal, and prohibition preventing the clerk from failing to file “legal document[s] received from Theodore Jackson the same day they are received.” *Jackson IV* at ¶ 1. The writs were denied. The mandamus issue was moot, because the trial record had already been transmitted. Furthermore, the clerk’s performance of ministerial acts is not subject to prohibition. *Jackson IV* at ¶ 7.

{¶9} The writs of mandamus and prohibition against the trial judge were also denied. Jackson was not entitled to a writ of prohibition because the trial judge had subject matter jurisdiction over Jackson’s criminal proceeding under R.C. 2931.03, and a sentencing error does not deprive the court of subject matter jurisdiction. *Jackson IV* at ¶ 2, citing *State ex rel. Pruitt v. Donnelly*, 129 Ohio St.3d 498, 2011-Ohio-4203, 954 N.E.2d 117; and *State ex rel. West v. McDonnell*, 8th Dist. Cuyahoga No. 99086, 2013-Ohio-1044.

{¶10} Jackson’s writ of mandamus was also denied. Mandamus is not appropriate where an adequate remedy exists at law, and sentencing errors by a trial court with proper jurisdiction may not be remedied by extraordinary writs. *Jackson IV* at ¶3, citing *State ex rel. Ullman v. Hayes*, 103 Ohio St.3d 405, 2004-Ohio-5469, 816 N.E.2d 245; *Smith v. Warren*, 89 Ohio St.3d 467, 732 N.E.2d 992 (2000) (prohibition); and *State ex rel. Corrigan v. Lawther*, 39 Ohio St.3d 157, 529 N.E.2d 1377 (1988) (mandamus).

A review of the docket maintained in CR-81-162099 clearly demonstrates that Jackson has availed himself of adequate remedies in the ordinary

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5, 2016. A notice of appeal was filed with the Ohio Supreme Court, *State of Ohio ex rel. Theodore R. Jackson v. Judge Dick Ambrose*, Case No. 2016-1572 (Oct. 24, 2016).

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 [chronology omitted]. \* \* \* 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.

*Jackson IV* at ¶ 4-5.

## **B. The Instant Appeal**

{¶11} On May 9, 2016, Jackson filed a “motion for Civ.R. 60 relief from judgment obtained by fraud or in alternative motion for sentencing hearing where trial transcript attached proof Mr. Jackson was never sentenced.” The motion was denied on June 6, 2016.

Defendant’s motion raises the same issues that the court denied in its journal entry of 4/6/2016. Therefore, defendant’s motion is denied on the basis of res judicata.

{¶12} On May 24, 2016, appellant filed a “motion for a nunc pro tunc journal entry of adjournment sine die and motion to vacate a void judgment and void sentence of June 19, 1981.” This motion was also denied on June 6, 2016 without further detail.

{¶13} On June 22, 2016, defendant filed the instant appeal challenging the denial of the motions. We affirm.

## **III. Assignments of Error**

{¶14} Jackson continues to maintain that his sentence is void, posing the following assignments of error:

- I. Where the common pleas court’s record shows the appellant’s sentence is void, question of void sentence may be heard at anytime via Ohio Constitution, Article I, Sections 1, 2, 10, and 16, and the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution.

- II. The appellant is denied his constitutional right to be heard on appeal where the trial court's last judicial act of adjournment is not recorded on the journal entry in violation of Ohio Constitution, Article I, Sections 1, 2, 10 and 16, in conjunction with the First, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution.
- III. The certified trial transcript proves the appellant's common pleas court judgment is null and void and of no effect, the common pleas court refusing to redress the same denies appellant due process and equal protection under the law via the Fifth and Fourteenth Amendments to the U.S. Constitution.
- IV. Appellant's complete certified transcript provides the court of common pleas pronounced no verdict, no judgment, no sentence, no conviction that court possessed no authority to order his imprisonment, and such imprisonment of appellant violates his rights under the Fourteenth Amendment to the U.S. Constitution.

{¶15} Underlying each of these arguments is the premise that Jackson's conviction is void due to: (1) the trial court's failure to render a final verdict and sentence in open court, as substantiated by the trial transcript; and (2) discrepancies between the copy of the sentencing entry in Jackson's possession as compared to the certified sentencing entry in the record, proving that Jackson was not properly sentenced. For purposes of judicial economy, we combine the errors for analysis. As the background and facts herein indicate, these issues have already been determined by the trial court.

{¶16} We agree with Jackson that a void judgment may be attacked at any time:

[A] defendant may not raise any issue in a motion for postconviction relief if he could have raised the issue on direct appeal. *State v. Reynolds*, 79 Ohio St.3d 158, 679 N.E.2d 1131 (1997). However, the doctrine of res judicata does not apply to a void judgment. *State v. Holmes*, 8th Dist.



Cuyahoga No. 100388, 2014-Ohio-3816, ¶ 13. In fact, a void judgment may be challenged at any time. *Id.*

*State v. Crockett*, 8th Dist. Cuyahoga No. 104120, 2016-Ohio-4966, ¶ 9. It is at this point; however, that our positions diverge.

{¶17} This court has previously affirmed the validity of the sentencing entry in this case. We concurred with the trial court's finding that the certified copy of the journal entry of sentencing contains a proper certification, court stamp, and signature.

Appellant was sentenced in 1981 and a final entry of sentence was issued at that time. Appellant has not provided anything to this court to show otherwise.

*Jackson II* at ¶ 16.

This court does not find that appellant's entry of sentence is missing any requirement set forth in Crim.R. 32(C). Accordingly, appellant's entry of sentence is valid, and res judicata bars appellant's claims to be sentenced under H.B. 86.

*Jackson III* at ¶ 15.

{¶18} We also reject Jackson's assertion that the transcript supports the absence of a verdict and proper sentencing. On August 24, 2016, Jackson submitted a mechanical copy of what appears on its face to be a transcript of the 1981 trial proceedings. The last pages of the copy contain the trial court's submission of the case to the jury for deliberations, and the court reporter's certification that the transcript contains the "complete proceedings had in the trial of this cause."

{¶19} Jackson's submission does not prove that a verdict and sentencing never occurred. At best, the missing portions demonstrate Jackson's failure to submit the entire transcript or, alternatively, a failure to submit a copy of those portions of the

transcript pertinent to this appeal. “Absent a transcript or alternative record under App.R. 9(C) or 9(D), we must presume regularity in the proceedings below. *See State v. Tate*, Cuyahoga App. No. 93936, 2010-Ohio- 2357.” *State v. Rice*, 8th Dist. Cuyahoga No. 95100, 2011-Ohio-1929, ¶ 6.

{¶20} Jackson’s submission of the transcript is also noncompliant with the protocol of App.R. 9. “App.R. 9 requires that an appellant arrange for the transmission of the trial court record and transcript to the appellate court.” *Mentor v. Molk*, 11th Dist. Lake No. 2010-L-112, 2011-Ohio-3120, ¶ 11. App.R. 9(B)(6) sets forth additional requirements that the transcript must meet, including page limits, format, proper binding, and a court reporter’s certification that the transcript is complete, or indicating what portion of the proceedings are included, or excluded. These requirements were not met.

{¶21} Simply put, Jackson has exhausted his direct appeal rights. His subsequent assertions of claims against a valid final judgment of conviction involve issues that have been, could have been, or should have been raised on appeal and, therefore, are barred by the doctrine of res judicata. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 59, citing *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus.

{¶22} Jackson’s attention is directed to Loc.App.R. 23. That rule authorizes this court, sua sponte, to find a party to be a vexatious litigator where that party habitually, persistently, and without reasonable cause engages in frivolous conduct.

{¶23} Pursuant to Loc.App.R. 23(A):

An appeal or original action shall be considered frivolous if it is not reasonably well-grounded in fact, or warranted by existing law, or by a good faith argument for the extension, modification or reversal of existing law.

Loc.App.R. 23(A).

{¶24} We exercised our inherent power under this rule to prevent abuse of the judicial process in *State v. Henderson*, 8th Dist. Cuyahoga No. 100374, 2014-Ohio-2274, after warning Henderson of the potential impact of his repeated meritless filings.<sup>4</sup> In spite of our warning, Henderson was not deterred; he filed yet another appeal advancing the same arguments. We therefore, declared Henderson to be a vexatious litigator based on his filing of “ten appeals and 18 original actions since 1999, several of which were not reasonably grounded in fact or warranted by existing law.” *Id.* at ¶ 7.

{¶25} In a similar manner, Jackson has continuously taxed the limited resources of this court, and other courts,<sup>5</sup> through his filings of numerous appeals, motions for reconsideration and original actions. Even viewed in a light most favorable to Jackson, his court filings are neither grounded in fact, nor warranted by existing law. Jackson is hereby warned that continued filing of appeals or original actions that are not reasonably

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<sup>4</sup> *Henderson v. Saffold*, 8th Dist. Cuyahoga No. 100406, 2014-Ohio-306.

<sup>5</sup> Jackson’s writ of habeas corpus filed with the Eleventh District Court of Appeals was also dismissed. *State ex rel. Jackson v. Sloan*, 11th Dist. Ashtabula No. 2015-A-0028, 2015-Ohio-3220 (petition dismissed), *aff’d by Slip Opinion* No. 2016-Ohio-5106; *State ex rel. Jackson v. Sloan*, 143 Ohio St.3d 1549, 2015-Ohio-4737, 40 N.E.3d 1184 (2015) (motion denied).

grounded in fact or warranted by existing law shall result in his being declared a vexatious litigator pursuant to Loc.App.R. 23.

{¶26} The trial court's decision is affirmed.

It is, therefore, ordered that appellee recover from appellant costs herein taxed.

The court finds there were no reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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ANITA LASTER MAYS, JUDGE

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