

[Cite as *Green v. State*, 2017-Ohio-193.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105030

MORRIO R. GREEN

RELATOR

vs.

STATE OF OHIO

RESPONDENT

JUDGMENT:
WRITS DISMISSED

Writs of Mandamus and Prohibition
Motion No. 501409
Order No. 502691

RELEASE DATE: January 13, 2017

FOR RELATOR

Morrio R. Green, pro se
Inmate No. 664-336
Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio 44901

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} On September 28, 2016, the relator, Morrio Green, commenced this mandamus and prohibition action against the named respondent, the state of Ohio, seeking to overturn his sentence in the underlying case, *State v. Green*, Cuyahoga C.P. No. CR-14-582071-B, as well as strike all records from the case and prohibit reindictment and continued harassment relating to this matter.¹ On October 28, 2016, the respondent filed a motion to dismiss. Green did not file a response. For the following reasons, this court grants the motion to dismiss and dismisses the application for writs of mandamus and prohibition.

{¶2} The court notes that Green's claims and the relief he requests are difficult to discern. He merged his filing for an extraordinary writ with a motion for en banc hearing.² Thus, it is difficult to separate his request for en banc from his writ claims. Generally, it appears that he wants his sentence overturned and all reference to the underlying case expunged never to be raised again on theories of ineffective assistance of trial counsel and involuntary guilty plea. At the same time he complains of unspecified

¹In the underlying case during a trial in January 2014, Green pled guilty to drug possession, drug trafficking, possession of criminal tools, having weapons while under disability, and three counts of endangering children; some of the counts included a one-year firearm specification. The court sentenced him to eight years. On appeal, this court modified the sentence to impose the correct three years for postrelease control, sustained the ineffective assistance of trial counsel assignment of error, and remanded to allow Green to file a poverty affidavit and contest the mandatory fine. This court also remanded to allow the trial court to issue a nunc pro tunc entry reflecting the correct sentence imposed at the sentencing hearing. *State v. Green*, 8th Dist. Cuyahoga No. 102837, 2016-Ohio-926.

²This court denied his motion for en banc hearing by separate entry in Appeal No. 102837.

mistreatment in prison. “If a relator has failed to present clearly the claims asserted and the relief requested, this court may enter judgment against the relator.” *State v. Byrge*, 8th Dist. Cuyahoga No. 92979, 2009-Ohio-4376, ¶ 2.

{¶3} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Furthermore, mandamus is not a substitute for appeal. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerneinghan v. Gaughan*, 8th Dist. Cuyahoga No. 67787, 1994 Ohio App. LEXIS 6227 (Sept. 26, 1994). Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108. Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977); *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 113 N.E.2d 14 (1953).

{¶4} Similarly, 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 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); and *State ex rel. Csank v. Jaffe*, 107 Ohio App.3d 387, 668 N.E.2d 996 (8th Dist.1995). 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).

{¶5} The proper remedies for overturning a conviction or a sentence is an appeal, a postconviction relief petition, or a motion to withdraw guilty plea. Thus, both mandamus and prohibition will not lie because Green has or had adequate remedies at law to contest the propriety of his conviction and sentence.

{¶6} Moreover, as to prohibition, the state of Ohio, as compared to the court of common pleas, is not about to exercise judicial power. Furthermore, none of the complaints concerning the voluntariness of the guilty plea, the assistance of trial counsel, mistreatment in prison, or other errors of the trial court in conducting the guilty plea hearing attack the subject matter jurisdiction of the trial court over criminal proceedings. If the court has basic statutory jurisdiction, prohibition will not lie. *State ex rel. Pruitt v. Donnelly*, 8th Dist. Cuyahoga No. 95519, 2011-Ohio-1252; and *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002-Ohio-4907, 775 N.E.2d 522.

{¶7} Accordingly, the court grants the respondent's motion to dismiss and dismisses the application for writs of mandamus and prohibition. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶8} Writs dismissed.

MARY J. BOYLE, JUDGE

EILEEN T. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR