

[Cite as *State ex rel. Johnson v. Cuyahoga Cty. Court of Common Pleas*, 2017-Ohio-394.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104891

**STATE OF OHIO, EX REL.
ROBERT L. JOHNSON**

RELATOR

vs.

**CUYAHOGA COUNTY COURT OF
COMMON PLEAS**

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

Writs of Mandamus and Prohibition
Motion No. 501363
Order No. 503222

RELEASE DATE: January 27, 2017

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SEAN C. GALLAGHER, J.:

{¶1} Relator Robert L. Johnson seeks a writ of prohibition to void his conviction in *State v. Johnson*, Cuyahoga C.P. No. CR-87-221669-B and a writ of mandamus to compel respondent to conduct a de novo sentencing hearing in *State v. Johnson*, Cuyahoga C.P. No. CR-87-216477-B. Johnson was granted leave to file a second amended complaint. Respondent¹ has filed a motion to dismiss, which Johnson has opposed. The motion to dismiss is granted for the reasons that follow.

{¶2} In 1987, multiple complaints were filed against Johnson in the juvenile division of Cuyahoga County Common Pleas Court. Johnson does not dispute that the juvenile court entered an order transferring jurisdiction of aggravated murder charges against him to the general division of the Cuyahoga County Common Pleas Court, for which he was indicted in CR-87-216477-B on April 13, 1987. In July and August of 1987, complaints were filed against Johnson in the juvenile division for aggravated robbery with a firearm.

{¶3} On September 28, 1987, the trial court held a hearing where Johnson entered a guilty plea to one count of aggravated murder in CR-87-216477-B. During that hearing, the court and counsel discussed the aggravated robbery complaints that were

¹Judge Michael Jackson is the successor to Judge Timothy McMonagle who was the trial judge assigned to Johnson's criminal cases. Johnson indicates he named Presiding Judge John Russo and the Cuyahoga County Common Pleas Court as the respondent because he did not know the identity of the successor judge.

pending in juvenile court. The plea negotiations included resolution of those charges after the formal bindover proceeding was completed. The trial court was advised that “the binding over is on Friday morning.” (Relator’s exhibit No. 6A, page 22).

{¶4} The juvenile court held the bindover hearing on the aggravated robbery complaints on October 2, 1987, and ordered the transfer of both cases to the general division of the Cuyahoga County Common Pleas Court. The orders were signed on October 2, 1987, and journalized by the clerk on October 13, 1987.

{¶5} On October 5, 1987, Johnson waived presentment to the Cuyahoga County Grand Jury of two counts of aggravated robbery with firearm specifications in violation of R.C. 2911.01 and consented that the charges proceed by information in Case No. CR-87-221669. Johnson entered a guilty plea to one count of aggravated robbery with a firearm specification² and the sentencing hearing took place on December 7, 1987. The plea entry was filed by the clerk on October 27, 1987, and the sentencing entry was filed by the clerk on March 18, 1988. The court ordered Johnson to serve a term of ten to twenty-five years to run concurrent with the sentence in Case No. CR-87-216477, but consecutive to the three-year gun specification. Respondent agrees that Johnson pled guilty to one count of aggravated robbery with a gun specification, not two. Respondent maintains that the appropriate remedy is to have a nunc pro tunc entry issued to correct this clerical error.

²Relator’s exhibit No. 5c.

{¶6} Johnson was granted leave to file a delayed appeal from his convictions in CR-87-216477-B and CR-87-221669-B and his convictions were affirmed in *State v. Johnson*, 8th Dist. Cuyahoga Nos. 55295, 55811, and 55812, 1989 Ohio App. LEXIS 1525 (Apr. 20, 1989), *application to reopen denied*, *State v. Johnson*, 8th Dist. Cuyahoga Nos. 55295, 55811, and 55812, 200 Ohio App. LEXIS 3617 (Aug. 8, 2000). Johnson also pursued an appeal from the trial court's denial of his motion for a new trial in CR-87-216477, which this court affirmed in *State v. Johnson*, 8th Dist. Cuyahoga No. 80247, 2002-Ohio-2712.

{¶7} Johnson seeks a writ of prohibition alleging that the general division of the Cuyahoga County Court of Common Pleas patently and unambiguously lacked jurisdiction to convict and sentence him on the aggravated robbery charge in Case No. CR-221669-B. Johnson claims that the court did not have subject matter jurisdiction until the bindover orders were formally filed by the clerk. Respondent counters that the alleged error amounts to a procedural due process violation that did not divest the general division of common pleas court of subject matter jurisdiction. Absent a patent and unambiguous lack of jurisdiction, appeal afforded Johnson with an adequate remedy at law and precludes relief through an extraordinary writ.

{¶8} Johnson seeks a writ of mandamus to compel respondent to conduct a de novo sentencing hearing to correct alleged sentencing errors. Respondent asserts that an adequate remedy at law precludes Johnson from obtaining an extraordinary writ for alleged sentencing errors.

{¶9} Although respondent noted a request for oral argument on his amended complaint, the request is denied because the resolution of this case follows from an application of the law to the facts such that oral argument is not necessary.

Motion to Dismiss

{¶10} “Civ.R. 12(B)(6) dismissals may be based on ‘merits’ issues such as the availability of an adequate remedy in the ordinary course of law. The applicable Civ.R. 12(B)(6) standard is whether, after presuming the truth of all material factual allegations in the complaint and all reasonable inferences therefrom in relators’ favor, it appears beyond doubt that relators can prove no set of facts_warranting relief.” *State ex rel. Hummel v. Sadler*, 96 Ohio St.3d 84, 2002-Ohio-3605, 771 N.E.2d 853, ¶ 20, citing *Taylor v. London*, 88 Ohio St.3d 137, 139, 723 N.E.2d 1089 (2000). Respondent has moved for dismissal of the complaint based on the availability of an adequate remedy in the ordinary course of the law.

Writ of Prohibition

{¶11} For a writ of prohibition to issue, Johnson must establish that “(1) respondent is about to exercise or has exercised judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law.” *State ex rel. R.W. v. Williams*, 146 Ohio St.3d 91, 2016-Ohio-562, 52 N.E.3d 1176, ¶ 13. “Even if an adequate remedy exists, a writ may issue if the lack of jurisdiction is ‘patent and unambiguous.’” *Id.* (citations omitted.)

{¶12} Johnson is arguing that respondent patently and unambiguously lacked jurisdiction over his robbery charges. He contends the juvenile court did not properly transfer jurisdiction until the clerk docketed the transfer order and therefore his subsequent conviction is void.

If a juvenile's case is transferred, the juvenile court 'does not have jurisdiction to hear or determine the case subsequent to the transfer,' and the court to which the case is transferred 'has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case originally had been commenced in that court.

State v. Moore, 2d Dist. Clark No. 2013 CA 97, 2014-Ohio-4411, ¶ 14, quoting R.C. 2151.23(H). Johnson agrees that jurisdiction of the juvenile charges were properly transferred by October 13, 1987. Johnson was sentenced on December 7, 1987. Therefore, respondent was not patently and unambiguously without jurisdiction to act on the robbery charges that were without dispute effectively transferred to the general division of the common pleas court by October 13, 1987. Johnson must therefore establish that no other adequate remedy at law existed in the ordinary course of law.

{¶13} This case is not like *State v. Wilson*, 73 Ohio St.3d 40, 652 N.E.2d 196 (1995). Due to a mistake regarding Wilson's age, he was convicted in the general division of the common pleas court when he was only 17 and was never bound over from the juvenile court. Because there were no juvenile court proceedings and no transfer from juvenile court, the general division of the common pleas court lacked jurisdiction. Johnson's reliance on *Johnson v. Timmerman-Cooper*, 93 Ohio St.3d 614, 757 N.E.2d

1153 (2001), and *State v. Golphin*, 81 Ohio St.3d 543, 692 N.E.2d 608 (1998), is also misplaced. In *Timmerman-Cooper*, the court found the felony conviction was void because the law actually precluded the mandatory bindover of the juvenile defendant. In *Golphin*, the felony conviction was deemed void because the juvenile court failed to order the statutorily mandated physical examination prior to transferring jurisdiction.

{¶14} Johnson is not claiming that he was deprived of an amenability hearing. He is not claiming that his bindover was precluded by law or that the juvenile court failed to comply with any substantive statutory prerequisite to transferring jurisdiction. There were juvenile court proceedings and a transfer of jurisdiction to the general division of the common pleas court in Johnson's case. In fact, Johnson "acknowledges that [the juvenile court bound him over] on October 13, 1987." Johnson is simply claiming that the bindover procedure was not completed and did not vest the general division of the common pleas court with jurisdiction until the clerk formally docketed the transfer entry. Johnson has not provided any authority directly on point.

{¶15} Respondent maintains that this case is factually similar to *State v. Nunley*, 7th Dist. Mahoning No. 92 CA 153, 1999 Ohio App. LEXIS 852 (Mar. 3, 1999), where the defendant alleged the general division of the common pleas court was without jurisdiction because the juvenile court's bindover entry was not contained in the common pleas court's file or on its docket. We agree. In *Nunley*, the juvenile bindover proceedings took place in 1992 but were not included in the record until

later. Nonetheless, the court in *Nunley* determined that the juvenile court did effectively relinquish its jurisdiction over the defendant. Specifically, the court held,

[a]lthough the judgment entry was not placed into the file or in the docket until June 6, 1996, it was available for the reviewing court to make a meaningful review * * *. Both R.C. 2309.59 and Crim.R. 52(A) state that an error which does not affect the substantial rights of a party shall be disregarded. The delay did not affect any substantial rights of appellant and is a harmless error under R.C. 2309.59 and Crim.R. 52(A).

Id. at 12. In this case, the juvenile court did hold a hearing on October 2, 1987, where it relinquished jurisdiction over Johnson. The general division of the common pleas court, as well as all of the parties, were aware of this order, which was docketed by October 13, 1987. The delay by the clerk in docketing the transfer order did not affect a substantial right and did not deprive the general division of the common pleas court of subject matter jurisdiction.

{¶16} In *State ex rel. D.H. v. Gorman*, 2d Dist. Montgomery No. 27067, 2016-Ohio-5269, the court dismissed a writ of prohibition that alleged a defect in the juvenile bindover proceedings and noted “[r]espondents do not patently and unambiguously lack subject matter jurisdiction because of alleged due process violations.” *Id.* at ¶ 19, citing *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 19. (Citations omitted.) To what extent, if any, the clerk’s delay in docketing the juvenile court’s October 2, 1987 transfer order had on the subsequent proceedings in the general division of the common pleas court was a procedural due process challenge that could have been raised on direct appeal. Because respondent did not patently and unambiguously lack subject matter jurisdiction when

Johnson was convicted and because a direct appeal would have afforded Johnson with an adequate remedy at law, Johnson is not entitled to a writ of prohibition.

Writ of Mandamus

{¶17} The requisites for mandamus are well established: 1) the relator must establish a clear legal right to the requested relief; 2) the respondent must possess a clear legal duty to perform the requested relief; and 3) the relator does not possess nor possessed an adequate remedy at law. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 676 N.E.2d 108 (1997).

{¶18} Johnson maintains that mandamus is necessary to fully effectuate relief in prohibition and to correct alleged sentencing errors. As set forth above, he is not entitled to relief in prohibition and “sentencing errors are generally not remediable by extraordinary writ, because the defendant usually has an adequate remedy at law available by way of direct appeal.” *State ex rel. Ridenour v. O’Connell*, 147 Ohio St.3d 351, 2016-Ohio-7368, ¶ 3, citing *State ex rel. Hudson v. Sutula*, 131 Ohio St.3d 177, 2012-Ohio-554, 962 N.E.2d 798, ¶ 1 (citation omitted). Accordingly, the petition for a writ of mandamus is denied.

{¶19} For the foregoing reasons, the amended complaint for a writ of prohibition and mandamus is denied and respondent’s motion to dismiss is granted. Costs to relator.

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

{¶20} Complaint dismissed.

SEAN C. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
TIM McCORMACK, J., CONCUR