

In The  
Supreme Court of Ohio

STATE OF OHIO EX REL. ARIF MAJID,

*Relator,*

v.

JUDGES: HONORABLE GALLAGHER, E.A.,  
P.J., & HONORABLE GALLAGHER, E., J, OF  
THE EIGHTH DISTRICT APPELLATE  
COURT OF APPEALS,

*Respondents.*

:

:

: Case No. 2021-0917

:

: Original Action in Mandamus and

: Prohibition

:

:

:

:

---

RESPONDENTS' MOTION TO DISMISS

---

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

ARIF MAJID  
#492-322  
P.O. Box 8000  
501 Thompson Road  
Conneaut, Ohio 44030

*Relator, pro se*

IRIS L. JIN (0092561)\*  
*\*Counsel of Record*  
MICHAEL A. WALTON (0092201)  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: 614-466-2872 | Fax: 614-728-7592  
Iris.Jin@OhioAGO.gov  
Michael.Walton@OhioAGO.gov

*Counsel for Respondents*

In The  
Supreme Court of Ohio

STATE EX REL. ARIF MAJID,

*Relator,*

v.

JUDGES: HONORABLE GALLAGHER, E.A.,  
P.J., & HONORABLE GALLAGHER, E., J, OF  
THE EIGHTH DISTRICT APPELLATE  
COURT OF APPEALS,

*Respondents.*

:  
:  
: Case No. 2021-0917  
:  
: Original Action in Mandamus and  
: Prohibition  
:  
:  
:  
:

---

**RESPONDENTS' MOTION TO DISMISS**

---

Pursuant to S.Ct.Prac.R. 12.04 and Civ.R. 12(B)(6), Respondents Judges E.A. Gallagher and E. Gallagher of the Eighth District Court of Appeals (“Eighth District Judges”), hereby move this Court to dismiss Relator’s petition for writs of mandamus and prohibition. A memorandum in support is attached.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

/s/ Iris L. Jin

---

IRIS L. JIN (0092561)  
MICHAEL A. WALTON (0092201)  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: 614-466-2872 | Fax: 614-728-7592  
Iris.Jin@OhioAGO.gov  
Michael.Walton@OhioAGO.gov

*Counsel for Respondents*

## MEMORANDUM

### **I. INTRODUCTION**

Relator, an inmate at Lake Erie Correctional Institution, brings this original action seeking writs of mandamus and prohibition against the Eighth District Judges. In his Complaint, Relator admits he is attempting to “appeal[] the entirety of the sentence imposed, that is—the appropriateness of [his] sentence.” Compl. at ¶ 14. Specifically, Relator is petitioning this Court to compel the Eighth District Judges to review transcripts and the presentence investigation report from his trial. *Id.* at p. 11. However, the extraordinary writs of mandamus and prohibition will not lie to circumvent the appeals process. Further, Relator had an adequate remedy at law that necessarily defeats his claims. As Relator has failed to state a claim upon which relief can be granted, his Complaint must be dismissed.<sup>1</sup>

### **II. BACKGROUND**

In May 2011, Relator Arif Majid was convicted of multiple crimes, including murder, and sentenced to 43 years to life in prison.<sup>2</sup> See Compl. at ¶¶ 2, 6; *State v. Majid* (“*Majid I*”), 8th Dist. Cuyahoga No. 96855, 2012-Ohio-1192, ¶¶ 13-15. Relator was initially convicted in 2007 of one

---

<sup>1</sup> Relator titles this a procedendo action as well, but he makes no related claims in his Complaint. Accordingly, to the extent he brings a procedendo claim, it necessarily fails. “It is well-settled that the writ of procedendo will not issue for the purpose of controlling or interfering with ordinary court procedure,” nor will it issue “where an adequate remedy exists in the ordinary course of the law.” *State ex rel. Utley v. Abruzzo*, 17 Ohio St.3d 203, 204, 478 N.E.2d 789 (1985) (citations omitted).

<sup>2</sup> Because Relator referenced his underlying criminal case, the docket of that case, as well as subsequent appeals, as official records should be incorporated as part of the complaint for this Court to review and resolve the underlying matter. See *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 1997-Ohio-274, 77 Ohio St. 3d 247, 673 N.E.2d 1281; *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 1996-Ohio-459, 75 Ohio St. 3d 565, 664 N.E.2d 931. Courts can take judicial notice of judicial opinions and public records available on the internet without converting a motion to dismiss into a motion for summary judgment. *State ex rel. Everhart v. McIntosh*, 2007-Ohio-4798, 115 Ohio St. 3d 195, 874 N.E.2d 516. See *State ex rel. Neff v. Corrigan*, 75 Ohio St.3d 12, 16, 661 N.E.2d 170 (1996); *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 26.

count of murder, two counts of attempted murder, and numerous firearms specifications. *State v. Majid* (“*Majid I*”), 182 Ohio App. 3d 730, 2009-Ohio-3075, 914 N.E.2d 1113, ¶ 6 (8th Dist.). In *Majid I*, the Eighth District overturned Relator’s convictions and remanded for a new trial, having found juror misconduct. *See Majid I* at ¶ 33.

In 2011, Relator’s second trial occurred in which he was ultimately convicted of one count of murder, two counts of attempted murder, one count of possessing a weapon while under disability, and six firearm specifications attached to the first three counts. *See* Compl. at ¶ 6; *Majid II* at ¶¶ 13-14. Relator was then “sentenced to 18 years to life on Count 1 [murder]; (3 years on the gun specification to run prior to and consecutive to 15 years to life on Count 1); All gun specifications merge for sentencing purposes. 10 years on each of Counts 2 and 3 [attempted murder]; 5 years on Count 4 [possessing a weapon under disability]; All counts to run consecutive for a total of 43 years to life.” *Majid II* at ¶ 15. In *Majid II*, the Eighth District affirmed Relator’s convictions, but remanded the case to the trial court for the limited purpose of resentencing Relator as to each of the firearm specifications. *See* Compl. at ¶ 6, quoting *Majid II* at ¶¶ 104-06. Specifically, the Eighth District found that the “trial court neglected to impose sentences on each of the firearm specifications for which [Relator] was convicted.” *Id.* On remand in December 2012, the trial court imposed respective one and three-year prison sentences for each firearm specification and merged all of them. *See* Compl. at ¶ 7.

After numerous attempts to overturn his sentence in the trial court *over the span of eight years*, Relator recently filed an “Omnibus Motion to Correct Sentence Unauthorized by Law” (“Motion to Correct Sentence”), which the trial court denied in May 2021. *Id.* at ¶ 9. Relator appealed the trial court’s denial of his Motion to Correct Sentence to the Eighth District. Relator subsequently filed a Motion for Court Reporter to Prepare Transcripts, The Record to Include the

Pre-sentence Investigation Report, which the Eighth District denied. *See id.* at ¶ 18. In its Entry, the Eighth District stated: “Appellant’s appeal concerns the trial court’s imposed sentence. Therefore, a transcript and presentence investigation report are not required for this appeal. The sentencing entry will be included as part of the record[.]” *Id.*

Relator brings the instant action against the Eighth District Judges seeking writs of mandamus and prohibition. *See generally* Compl. Relator alleges that the transcripts and pre-sentence report must be included with the record and seeks a writ of mandamus compelling the Eighth District Judges to review said transcripts and report as part of the record. *Id.* Relator also seeks a writ of prohibition to “arrest” the appellate proceedings until the Eighth District Judges “incorporat[e] a complete record.” *Id.* at ¶ 22. However, this Court should dismiss the Complaint as Relator fails to state a claim upon which relief can be granted.

### **III. LAW AND ARGUMENT**

#### **A. Standard of Review**

A motion to dismiss under Civ. R. 12(B)(6) for failure to state a claim upon which relief can be granted challenges the sufficiency of the complaint itself, not any evidence outside of the complaint. *Volbers-Klarich v. Middletown Mgmt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. When considering a Civ.R. 12(B)(6) motion, a court must accept the factual allegations of the complaint as true and make all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). However, a court “need not presume the truth of conclusions unsupported by factual allegations.” *Welch v. Finlay Fine Jewelry Corp.*, 10th Dist. Franklin No. 01AP-508, 2002 Ohio App. LEXIS 503, \*5 (Feb. 12, 2002). When a relator fails to meet his burden, dismissal under Civ.R. 12(B)(6) is required.

**B. Relator's mandamus claim fails as a matter of law.**

A writ of mandamus is an extraordinary remedy. *State ex rel. Baker v. Indus. Comm.*, 143 Ohio St.3d 56, 2015-Ohio-1191, 34 N.E.3d 104, ¶ 12. To be entitled to a writ of mandamus, a relator must allege facts that establish: (1) a clear legal right to the relief requested; (2) a clear legal duty to perform the requested act on the part of the respondent; (3) and that no plain and adequate remedy exists in the ordinary course of the law. *Id.* at ¶ 12. A relator must demonstrate these elements by clear and convincing evidence. *Id.*

It is important to note that “[w]here a plain and adequate remedy at law has been unsuccessfully invoked, the extraordinary writ of mandamus will not lie either to relitigate the same question or as a substitute for appeal.” *State ex rel. Nichols v. Cuyahoga County Bd. of Mental Retardation & Developmental Disabilities*, 72 Ohio St.3d 205, 209, 648 N.E.2d 823, 1995-Ohio-215 (citation omitted). Thus, mandamus will not lie where an inmate seeks the writ to correct a sentencing error that could have been raised on appeal. *See State ex rel. Miller v. Bower*, 156 Ohio St. 3d 455, 2019-Ohio-1623, 129 N.E.3d 389, ¶ 13 (finding that an inmate arguing that concurrent, rather than consecutive, sentences should have been imposed has an adequate remedy at law in the form of a direct appeal of the judgment of conviction); citing *State ex rel. Jones v. Ansted*, 131 Ohio St.3d 125, 2012-Ohio-109, 961 N.E.2d 192, ¶ 2 (dismissing mandamus action wherein relator had an adequate remedy in the form of an appeal of the trial court’s failure to impose sentences related to firearm specifications convictions).

First, Relator has no clear legal right to the relief requested. Relator has failed to show by clear and convincing evidence that he has a right to a transcript and presentence investigation report—in addition to the transmitted record at the state’s expense—for his underlying appeal. *See generally* Compl. This Court has stated, “It is not our intention to require that a full transcript be provided if it is not necessary for an effective appeal.” *State ex rel. Heller v. Miller*, 61 Ohio St.2d

6, 13, 399 N.E.2d 66 (1980). Here, Relator has not pled sufficient facts to establish that a full transcript is necessary for an effective appeal.

Second, Relator has failed to establish that the Eighth District Judges have a clear legal duty to perform the requested act. *Id.* Even if there was such a duty, “[i]t is the trial court's responsibility to prepare transcripts. . . . The fact that the case is before the Court of Appeals does not [transfer] this duty” to the Eighth District Judges. *State ex rel. Heller v. Miller*, 61 Ohio St.2d 6, 14, 399 N.E.2d 66 (1980); *see also State ex rel. Copeland v. Judges*, 67 Ohio St.2d 1, 2, 424 N.E.2d 279 (1981), fn. 1. Further, mandamus cannot be used to compel the Eighth District Judges to do something they have already done. *See Ansted* at ¶ 2, quoting *State ex rel. Tenace v. Court of Claims of Ohio*, 94 Ohio St.3d 319, 322, 2002-Ohio-790, 762 N.E.2d 1009. Here, Relator sought to correct a sentencing error—which the Eighth District did. The Eighth District remanded the case to the trial court to resentence Relator. *See Majid II*, 2012-Ohio-1192 at ¶ 107. Accordingly, even if the Eighth District Judges had a clear legal duty to fix the sentencing error, which they do not, they have already performed that act by remanding the matter back in *Majid II*.

Finally, because Relator had a plain and adequate remedy in the ordinary course of the law, i.e., an appeal, his mandamus claim fails as a matter of law. “[T]he extraordinary writ of mandamus will not lie either to relitigate the same question or as a substitute for appeal.” *State ex rel. Nichols v. Cuyahoga County Bd. of Mental Retardation & Developmental Disabilities*, 72 Ohio St.3d 205, 209, 648 N.E.2d 823, 1995-Ohio-215 (citation omitted); *see also State ex rel. Elliott v. Indus. Comm'n*, 26 Ohio St. 3d 76, 79, 497 N.E.2d 70 (1986), citing *State ex rel. Marshall v. Keller*, 15 Ohio St. 2d 203, 205 (1968). In his Complaint, Relator freely admits that the instant action is an attempt to “appeal[] the entirety of the sentence imposed.” Compl. at ¶ 14. Moreover, if Relator is dissatisfied with the Eighth District’s ultimate decision in his appeal, he can appeal to

this Court. Because Relator's complaint in mandamus is an improper attempt at circumventing the normal appeals process, it must be denied.

**C. Relator's prohibition claim similarly fails as a matter of law.**

To be entitled to a writ of prohibition, Relator must establish that: "(1) [the Eighth District] exercised or is about to exercise 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. Thomas v. McGinty*, No. 2019-1803, -- Ohio St. 3d --, 2020-Ohio-5452, ¶ 15, citing *State ex rel. Elder v. Camplese*, 144 Ohio St.3d 89, 2015-Ohio-3628, 40 N.E.3d 1138, ¶ 13. This writ is preventative in nature, rather than corrective, and is designed to prevent a court from proceeding in a matter in which it lacks jurisdiction. *See State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St.3d 245, 248, 594 N.E.2d 616 (1992), quoting *State ex rel. Stefanick v. Marietta Mun. Court*, 21 Ohio St.2d 102, 104-105, 255 N.E.2d 634 (1970). As such, it can only be used to correct a lower court's decision if the court acted "completely without jurisdiction." *Id.*, quoting *State ex rel. Adams v. Gusweiler*, 30 Ohio St.2d 326, 330, 285 N.E.2d 22 (1972).

Here, Relator's prohibition claim also fails as he had an adequate remedy at law, i.e., an appeal. Prohibition will not lie if the relator has an adequate remedy at law. *See State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St. 3d 421, 2012-Ohio-5697, 983 N.E.2d 302, ¶ 16, quoting *State ex rel. Hemsley v. Unruh*, 128 Ohio St.3d 307, 2011-Ohio-226, 943 N.E.2d 1014, ¶ 9. And absent "a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party contesting that jurisdiction has an adequate remedy by appeal." *Id.*, quoting *State ex rel. Plant v. Cosgrove*, 119 Ohio St.3d 264, 2008-Ohio-3838, 893 N.E.2d 485, ¶ 5 (additional citation omitted). The "'mere fact that this remedy may no longer be available because' the relator failed to pursue it 'does not entitle [the relator] to the requested extraordinary relief in prohibition.'" *State ex rel. O'Malley v. Collier-Williams*, 153 Ohio St.3d



553, 2018-Ohio-3154, 108 N.E.3d 1082, ¶ 9, quoting *State ex rel. Hamilton Cty. Bd. of Comm'rs v. Hamilton Cty. Court of Common Pleas*, 126 Ohio St.3d 111, 2010-Ohio-2467, 931 N.E.2d 98, ¶ 38. Because Relator has an adequate remedy at law, his prohibition claim must be dismissed.

#### IV. CONCLUSION

For the foregoing reasons, Respondents respectfully ask this Court to dismiss Relator's Complaint against them.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

/s/ Iris L. Jin

---

IRIS L. JIN (0092561)  
MICHAEL A. WALTON (0092201)  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: 614-466-2872 | Fax: 614-728-7592  
Iris.Jin@OhioAGO.gov  
Michael.Walton@OhioAGO.gov

*Counsel for Respondents*

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served by first class mail via the U.S. Postal Service on August 25, 2021, upon the following:

ARIF MAJID  
#492-322  
P.O. Box 8000  
Conneaut, Ohio 44030

/s/ Iris L. Jin

---

IRIS L. JIN (0092561)  
Assistant Attorney General