

**IN THE  
SUPREME COURT OF OHIO**

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| <b>STATE OF OHIO</b> | : | <b>NO. 2022-1632</b>  |
| Plaintiff-Appellee   | : | On Appeal from the Hamilton County<br>Court of Appeals, First Appellate<br>District |
| vs.                  | : |   |
| <b>MAURICE SMITH</b> | : | Court of Appeals<br>Case Number C-2200498   |
| Defendant-Appellant  | : |   |

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| <b>MERIT BRIEF OF PLAINTIFF-APPELLEE</b> |
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## **STATEMENT OF THE CASE**

Maurice Smith filed a Writ of Prohibition in the Court of Appeals on October 11, 2022. The case was dismissed by the Court of Appeals on December 8, 2022. This appeal ensued.

## **STATEMENT OF THE FACTS**

Relator's filing of the Writ of Prohibition was his latest attempt to nullify his conviction because he believes Respondent Ruehlman was unauthorized to transfer his case to Respondent Schweikert (who presided over his trial and convicted him).

Following a jury trial, Defendant-Appellant Maurice Smith was found guilty as charged on a single count each of Burglary, Trafficking in Cocaine, Possession of Cocaine, Possession of Marihuana, and Tampering with Evidence. He was subsequently convicted of a community control violation. Smith was ultimately sentenced to an aggregate term of 16 years incarceration in the Ohio Department of Corrections. Following Smith's initial appeal, the Court of Appeals determined that the trial court had sentenced Smith on allied offenses of similar import, and remanded the case for a new sentencing hearing. *State v. Smith*, 2017-Ohio-8558, 99 N.E.3d 1230, ¶ 1 (1st Dist.)

At the resentencing hearing on March 15, 2018, the State requested that Smith be sentenced on the trafficking charge, and the possession charge was merged with the trafficking charge. Smith again received an aggregate sentence of 16 years' incarceration in the Ohio Department of Corrections. On appeal, the Court of Appeals remanded the case for another resentencing because the trial court failed to make the requisite findings to impose consecutive sentences. *State v. Smith*, 1st Dist. Hamilton No. C-180165 (Apr. 10, 2019).

Smith filed a petition for post-conviction relief, a motion for leave to file motion of a new trial, and a motion for a new trial. These were all denied. On appeal, the First District Court of

Appeals affirmed the trial court's judgment. *State v. Smith*, 1st Dist. Hamilton Nos. C-190439 & C-180604, 2019-Ohio-5350.

On August 6, 2019, the trial court sentenced Smith for a third time to an aggregate term of 16 years incarceration in the Ohio Department of Corrections. The First District overruled all of Smith's assignments of error and affirmed the judgment of the trial court. *State v. Smith*, 1st Dist. No. C-190473, 2020-Ohio-4977.

In 2021, Smith filed a "Motion for Subject Matter Jurisdiction" and a "Motion for Summary judgment to Vacate Judgment and Sentence." The trial court issued an "Entry Overruling Motion to Vacate Judgment and Sentence" on April 19, 2021. On appeal, the First District characterized these as a successive post-conviction petition and affirmed the trial court's decision. *State v. Smith*, 1st Dist. Hamilton No. C-210267, 2022-Ohio-12.

On December 2, 2021, Smith filed his third post-conviction petition. In the petition, Smith again argued that his conviction was void because the visiting judge that presided over his case lacked subject matter jurisdiction. Respondent Triggs denied this petition on February 9, 2022.

On October 11, 2022, Relator filed this Writ of Prohibition case to nullify his conviction and sentence.

## **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

**Proposition of Law No. 1: AS RESPONDENT SCHWEIKERT DID NOT PATENTLY AND UNAMBIGUOUSLY LACK JURISDICTION TO ACT, RELATOR’S WRIT OF PROHIBITION TO NULLIFY HIS CONVICTION FAILS. A CLAIM OF IMPROPER ASSIGNMENT OF A JUDGE CAN BE RAISED ON DIRECT APPEAL. THIS REMEDY AT LAW IS FATAL TO RELATOR’S CLAIM.**

### **ARGUMENT**

Relator sought a writ prohibition relating to his underlying conviction. For the following reasons, Relator’s petition was properly dismissed.

A writ of prohibition is an extraordinary remedy that is granted in limited circumstances with great caution and restraint. *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 740 N.E.2d 265 (2001). To be entitled to a writ of prohibition in this case, Smith must demonstrate that (1) Respondents are about to exercise or have 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. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 18; *State ex rel. Miller v. Warren Cty. Bd. Of Elections*, 130 Ohio St.3d 24, 2011-Ohio-4623, 955 N.E.2d 379, ¶ 12.

The gravamen of Smith’s argument is that, absent a proper transfer order, the visiting judge lacked jurisdiction to hear his case. But this Court has held that such claims are properly addressed via a direct appeal.

Moreover, “[l]ike other extraordinary-writ actions, habeas corpus is not available when there is an adequate remedy in the ordinary course of law.” *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶ 6. “[A] claim of improper assignment of a judge can generally be adequately raised by way of appeal.” *State ex rel. Key v. Spicer*, 91 Ohio St.3d

469, 470, 2001- Ohio 98, 746 N.E.2d 1119 (2001). There is an exception to the adequate-remedy requirement: ““when a court’s judgment is void because it lacked jurisdiction, habeas is still an appropriate remedy despite the availability of appeal.”” *Leyman v. Bradshaw*, 146 Ohio St.3d 522, 2016-Ohio-1093, 59 N.E.3d1236, ¶ 9, quoting *Gaskins v. Shiplevy*, 74 Ohio St.3d 149, 151, 1995-Ohio 262, 656 N.E.2d 1282 (1995), overruled on other grounds, *Smith*, \_\_ Ohio St.3d \_\_, 2020-Ohio-61, 148 N.E.3d 542, at ¶ 29. But even if Judge Schott were somehow improperly assigned, “[i]n a court that possesses subject-matter jurisdiction, procedural irregularities in the transfer of a case to a visiting judge affect the court’s jurisdiction over the particular case and render the judgment voidable, not void.” *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, paragraph one of the syllabus; *see also State v. Baumgartner*, 6th Dist. Ottawa No. OT-03-013, 2004-Ohio-3907, ¶ 11 (“even if the certificate of assignment was entirely absent from a case record, it would not void the jurisdiction of the court or [the visiting judge’s] authority to issue judgments and orders”).

Harris has not alleged facts sufficient to establish that the trial court lacked subject-matter jurisdiction. And because Harris had an adequate remedy to challenge the assignment of Judge Schott, the Third District correctly rejected this claim.

*State ex rel. Harris v. Turner*, 160 Ohio St.3d 506, 2020-Ohio-2901, 159 N.E.3d 1121, ¶ 13-14.

As the Court of Appeals noted, Smith had a remedy at law in his direct appeal.

Further, Smith failed to identify any injury he suffered. Prior to the case being transferred, Smith filed multiple motions alleging that Judge Ruehlman was incompetent and unfair. The record reflects that, once all the pretrial motions were handled, the case would be transferred to a different judge. At no point did Smith express any issues with this course of action, either in the trial court or in any of his multiple direct appeals. This was not the exceptional case that required the issuance of a writ.

### **CONCLUSION**

Accordingly, Relator's petition for a writ of prohibition was properly dismissed.

Respectfully,

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### **PROOF OF SERVICE**

I hereby certify that I have sent a copy of the foregoing Merit Brief, by United States mail, addressed to George A. Katchmer (0005031), 1886 Brock Road N.E., Bloomingburg, Ohio 43106, Cincinnati, Ohio 45202, counsel of record, this 22nd day of March, 2023.

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