

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY**

STATE OF OHIO ex rel.
JAMES E. MITCHELL,

Relator,

- v -

PORTAGE COUNTY COURT
OF COMMON PLEAS JUDGE
LAURIE J. PITTMAN,

Respondent.

CASE NO. 2021-P-0072

Original Action for Writ of Mandamus

**PER CURIAM
OPINION**

Decided: January 18, 2022
Judgment: Dismissed

James E. Mitchell, pro se, PID# A293-032, Marion Correctional Institution, 940 Marion-Williamsport Road, P.O. Box 57, Marion, OH 43302 (Relator).

Victor V. Vigluicci, Portage County Prosecutor, and *Theresa M. Scahill*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Respondent).

PER CURIAM.

{¶1} Pending before this court are: Respondent, Portage County Court of Common Pleas Court Judge Laurie J. Pittman's, Motion to Dismiss filed on October 7, 2021; Relator, James E. Mitchell's, Memorandum in Opposition to Motion to Dismiss filed on October 29, 2021; Pittman's Reply Brief filed on December 7, 2021; and Mitchell's Memorandum of Law Contra Reply Brief filed on December 20, 2021.

{¶2} On July 15, 2021, Mitchell filed a Complaint/Petition for Writ of Mandamus filed under the Jurisdiction of Article IV, Section 3 of the Ohio Constitution. Mitchell seeks a Writ of Mandamus to compel Pittman to vacate, as void, his convictions for Gross Sexual Imposition and Burglary in *State v. Mitchell*, Portage County Court of Common Pleas No. 1993 CR 0294. In the underlying case, Mitchell was indicted for Rape, in violation of R.C. 2907.02(A)(2) and (B), and Aggravated Burglary, in violation of R.C. 2911.11(A)(1) and (B). He ultimately pled guilty to Gross Sexual Imposition, in violation of R.C. 2907.05(A)(4), and Burglary, in violation of R.C. 2911.12(A)(1). See *State v. Mitchell*, 11th Dist. Portage No. 2018-P-0047, 2019-Ohio-844, ¶ 2-3. Mitchell maintains that he was not indicted by the grand jury for the offenses to which he pled, did not waive his right to an indictment, did not plead to an amended indictment, and did not plead to lesser included offenses operating to amend the indictment. Memorandum in Support of Complaint, at ¶ 29. Furthermore, he claims that “the State could not prove” a required essential element to support the Gross Sexual Imposition conviction. Memorandum in Support of Complaint, at ¶ 30. Accordingly, Mitchell concludes “the trial court lacked subject-matter jurisdiction to accept [the] pleas and enter a judgment of conviction for the offenses pleaded.” Memorandum in Support of Complaint, at ¶ 1.

{¶3} “To be entitled to a writ of mandamus, a party must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Sands v. Culotta*, 165 Ohio St.3d 172, 2021-Ohio-1137, 176 N.E.3d 735, ¶ 11. “For a court to dismiss a mandamus complaint pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, it

must appear beyond doubt from the complaint that the relator can prove no set of facts warranting relief, after all factual allegations of the complaint are presumed true, and all reasonable inferences are made in the relator's favor." *Id.*

{¶4} We agree with Pittman that "[t]he common pleas court had subject-matter jurisdiction over [the underlying] felony case," and, "[c]onsequently, Mr. Mitchell's conviction[s] [are] not void and cannot be collaterally attacked." Motion to Dismiss, at 5.

{¶5} Mitchell's convictions would only be void if the court that accepted his pleas lacked subject-matter jurisdiction. This has been explained in some detail by the Ohio Supreme Court:

"a judgment of conviction is void if rendered by a court having either no jurisdiction over the person of the defendant or no jurisdiction of the subject matter, i.e., jurisdiction to try the defendant for the crime for which he was convicted." *State v. Perry*, 10 Ohio St.2d 175, 178, 226 N.E.2d 104 (1967). "Conversely, where a judgment of conviction is rendered by a court having jurisdiction over the person of the defendant and jurisdiction of the subject matter, such judgment is not void, and the cause of action merged therein becomes *res judicata* as between the state and the defendant." *Id.* at 178-179.

State v. Harper, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 22.

{¶6} Mitchell's Complaint does not challenge the trial court's jurisdiction over his person, but its subject-matter jurisdiction. Again, the Ohio Supreme Court has explained that "[s]ubject-matter jurisdiction refers to the constitutional or statutory power of a court to adjudicate a particular class or type of case." *Id.* at ¶ 23. "[P]ursuant to R.C. 2931.03 '[t]he court of common pleas has original jurisdiction of all crimes and offenses', 'a common pleas court has subject-matter jurisdiction over felony cases.'" *Id.* at ¶ 25, quoting *Smith v. Sheldon*, 157 Ohio St.3d 1, 2019-Ohio-1677, 131 N.E.3d 1, ¶ 8. The

court concluded that, once a court has acquired jurisdiction of the person and subject-matter, subsequent errors in the exercise of its jurisdiction are voidable rather than void:

“Once a tribunal has jurisdiction over both the subject matter of an action and the parties to it, “* * * the right to hear and determine is perfect; and the decision of every question thereafter arising is but the exercise of the jurisdiction thus conferred * * *.”” (Ellipses added in *Pizza*.) *Pratts [v. Hurley]*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, at ¶ 12, quoting *State ex rel. Pizza v. Rayford*, 62 Ohio St.3d 382, 384, 582 N.E.2d 992 (1992), quoting *Sheldon’s Lessee v. Newton*, 3 Ohio St. 494, 499 (1854). And when a specific action is within a court’s subject-matter jurisdiction, any error in the exercise of that jurisdiction render the court’s judgment voidable, not void. *Id.* at ¶ 12, 21.

Id. at ¶ 26.

{¶7} Mitchell acknowledges that the common pleas court had jurisdiction over the original indictment in the underlying case, but claims that, “through error, a trial court can be deprived of subject matter jurisdiction over the case.” Memorandum in Opposition to Motion to Dismiss, at 4. Mitchell cites three cases in support of this proposition which directly contradict the law as stated in the *Harper* decision. Upon due examination of the cases, they do not support the proposition that a trial court may be deprived of subject-matter jurisdiction, once perfected, through error.

{¶8} In *Menna v. New York*, 423 U.S. 61, 96 S.Ct. 241, 46 L.Ed.2d 195 (1975), the United States Supreme Court held that a defendant, by pleading guilty, does not waive his right to claim that the indictment should have been dismissed under the double jeopardy clause of the Fifth Amendment to the United State Constitution. *Id.* at 62. This case did not discuss a court’s subject-matter jurisdiction.

{¶9} *State v. Wilson*, 73 Ohio St.3d 40, 652 N.E.2d 196 (1995), and *State v. Riggins*, 68 Ohio App.2d 1, 426 N.E.2d 504 (8th Dist.1980), both stand for the proposition

that the issue of subject-matter jurisdiction cannot be waived. *Wilson* at paragraph two of the syllabus; *Riggins* at paragraph one of the syllabus. This is a correct statement of the law and fully consistent with the court's analysis in *Harper*. *Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, at ¶ 18 (“[a] defendant’s ability to challenge an entry at any time is the very essence of an entry being void, not voidable”). However, the issue before this court is whether a court may lose subject-matter jurisdiction through error, not whether a defendant may waive the right to challenge a court’s subject-matter jurisdiction by pleading guilty. The fact that Mitchell may challenge the trial court’s subject-matter jurisdiction at any time does not demonstrate or otherwise presuppose that the court in fact lacked subject-matter jurisdiction.

{¶10} As argued in the Complaint, the trial court lacked subject-matter jurisdiction in the underlying case because Mitchell pled guilty to offenses not charged in the indictment and because the State could not prove the elements of one of the offenses. This is incorrect as a matter of law. The trial court acquired subject-matter jurisdiction over this case by the filing of the felony indictment and any subsequent, alleged errors in the acceptance of the plea or its factual basis do not deprive the court of that jurisdiction. Where a court had subject-matter jurisdiction over the case and personal jurisdiction over the defendant, “it was ‘altogether immaterial how grossly irregular, or manifestly erroneous, its proceedings may been’; its final order could not be regarded as a nullity and could not be collaterally attacked.” *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 16, quoting *Sheldon’s Lessee*, 3 Ohio St. at 498.

{¶11} The case of *State v. Battin*, 10th Dist. Franklin No. 18AP-402, 2018-Ohio-3947, cited by Pittman, is both persuasive and consistent with the decisions in *Harper*

and *Henderson*. In *Battin*, the court of appeals rejected the arguments raised by Mitchell herein, holding that, “[t]he fact that Battin was not indicted for the offense to which he chose to plead as part of a plea agreement does not render his conviction void or create grounds to vacate his conviction.” *Id.* at ¶ 10.

{¶12} Mitchell has failed to demonstrate a clear legal right to the requested relief. Accordingly, Pittman’s Motion to Dismiss is granted and the Complaint is hereby dismissed.

CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J., MATT LYNCH, J., concur.