[Cite as *State ex rel. Boyd v. Tone*, 2023-Ohio-2802.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio, ex rel. Deonta Boyd — Court of Appeals No. E-23-022

Relator

v.

Judge Tygh M. Tone — **DECISION AND JUDGMENT**

Respondent — Decided: August 11, 2023

* * * * *

Deonta Boyd, Pro se.

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Gerhard R. Gross, Assistant Prosecuting Attorney, for Respondent.

* * * * *

OSOWIK, J.

{¶ 1} In this original action, relator Deonta Boyd seeks a writ of prohibition, ordering the respondent, The Honorable Tygh M. Tone of the Erie County Court of Common Pleas, to vacate his orders of conviction in *State v. Boyd,* Erie County Court of Common Pleas case Nos. 2004-CR-0643 and 2005-CR-0103. As set forth below, we dismiss Boyd's complaint, sua sponte.

Background

{¶ 2} In case No. 2004-CR-0643 ("the 2004 case"), Boyd was indicted for aggravated burglary. He was later indicted, in case No. 2005-CR-0103, for aggravated murder, murder, aggravated robbery, having weapons under a disability, and attempted murder ("the 2005 case"). The two cases were consolidated, with Judge Tone presiding.

{¶ 3} A plea hearing was held on June 2, 2006. In the 2004 case, Boyd pled guilty and was convicted of aggravated burglary, and the trial court sentenced him to ten years in prison. In the 2005 case, Boyd pled guilty to reduced charges of aggravated murder with a firearm specification and felonious assault. The trial court convicted and sentenced him to imprisonment for life with eligibility for parole after 20 years for the murder offense; three years imprisonment for the firearm specification; and eight years imprisonment for the felonious assault offense. The trial court ordered that all prison terms, in both cases, be served consecutively to one another. Boyd did not appeal either judgment.

{¶ 4} Nearly sixteen years later, on March 28, 2023, Boyd filed the instant complaint. Boyd claims that, during his 2006 plea hearing, the trial court failed to advise him of his right to compulsory process, violating his right to due process under state and federal law. Boyd claims that the trial court's error rendered his guilty pleas involuntary and "therefore void." In support, Boyd attached to his complaint the transcript from his plea hearing and the judgment entries of conviction.

Law and Analysis

{¶ 5} To be entitled to the requested writ of prohibition, Boyd must establish that (1) Judge Tone is about to 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. (Citations omitted.) *State ex rel. Harsh v. Oney*, 138 Ohio St.3d 192, 2014-Ohio-458, 5 N.E.3d 610, ¶ 6. "The third prerequisite need not be established when the lower court lacks jurisdiction: 'Where jurisdiction is patently and unambiguously lacking, relators need not establish the lack of an adequate remedy at law because the availability of alternate remedies like appeal would be immaterial.'" *Id.*, quoting *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 15.

{¶ 6} Here, there is no suggestion by Boyd that the trial court lacked subject matter jurisdiction. Indeed, the trial court's subject matter jurisdiction over Boyd's criminal prosecutions is clear. R.C. 2931.03 grants common pleas courts general original subject matter jurisdiction over the prosecution of "all crimes and offenses," excluding "minor offenses" which are vested in inferior courts. *See, e.g., State ex rel. Pruitt v. Donnelly*, 129 Ohio St.3d 498, 2011-Ohio-4203, 954 N.E.2d 117, ¶ 2. In other words, to be entitled to a writ of prohibition, Boyd must show all three elements, including that he lacks an adequate remedy at law. As set forth below, because we find that Boyd had an

adequate remedy at law, namely by way of direct appeal, he is not entitled to the requested writ.

{¶ 7} Boyd claims that the trial court's failure to advise him of his right to subpoena witnesses during the plea colloquy rendered his guilty pleas involuntary and "therefore void."

{¶ 8} "All guilty pleas must be made knowingly, voluntarily, and intelligently." *State v. Owens*, 3d Dist. Crawford Nos. 3-19-16, 3-19-17, 2020-Ohio-5573, ¶ 11, citing *State v. Engle*, 74 Ohio St.3d 525, 527, 660 N.E.2d 450 (1996). To that end, Crim.R. 11(C)(2) ("Pleas of guilty and no contest in felony cases"), provides in relevant part,

> In felony cases the court may refuse to accept a plea of guilty * * * and shall not accept a plea of guilty * * * without first addressing the defendant personally * * * and doing all of the following: * * * (c) [i]nforming the defendant and determining that the defendant understands that the plea the defendant is waiving the rights * * * to have compulsory process for obtaining witnesses in the defendant's favor * * *.

{¶ 9} "Strict, or literal, compliance with Crim.R. 11(C)(2)(c) is required when advising the defendant of the constitutional rights he is waiving by pleading guilty or no contest." *State v. Barker*, 129 Ohio St.3d 472, 2011-Ohio-4130, 953 N.E.2d 826, ¶ 14, citing *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 18. The right to compulsory process of witnesses is guaranteed by the Sixth Amendment to the

United States Constitution and Section 10, Article I, Ohio Constitution. *Id.* And, a failure to inform a defendant of this right renders a guilty plea "invalid." *See, e.g.*, *State v. Bloom*, 1st Dist. Hamilton No. C-23588, 2022-Ohio-3604, ¶ 5, citing *Veney* at ¶ 29 ("The failure of the trial court to orally inform a defendant of the rights set forth in Crim.R. 11(C)(2)(c) during the plea colloquy renders the plea invalid."). An invalid judgment may be challenged on appeal, as voidable.

{¶ 10} "[A] voidable judgment is one rendered by a court that has both jurisdiction and authority to act, but the court's judgment is invalid, irregular, or erroneous." *State v. Straley*, 159 Ohio St. 3d 82, 2019-Ohio-5206, 147 N.E.3d 623 (Distinguishing a voidable from a void judgment, defined as "one that has been imposed by a court that lacks subject-matter jurisdiction over the case or the authority to act."). "Generally, a voidable judgment may only be set aside *if* successfully challenged on direct appeal." (Emphasis added.) *State v. Harper*, 160 Ohio St. 3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 26 citing *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 27.

{¶ 11} In this case, the trial court had subject matter jurisdiction over the 2004 and 2005 cases. Thus, assuming *arguendo* that it failed to inform Boyd of his right to compel witnesses to testify, the judgments of conviction were voidable and could have been set aside if challenged on direct appeal. *Harper*.

{¶ 12} For example, in *State v. Owens*, 3d Dist. Crawford Nos. 3-19-16, 2020-Ohio-5573, ¶ 19, the defendant established that the trial court failed to advise him of his

right to have his guilt proven beyond a reasonable doubt, in violation of Crim.R. 11(C)(2)(c), but he did not appeal his judgment of conviction, instead raising the issue after his judicial release was revoked. The court denied the appeal. It explained,

> Owens was properly indicted for crimes committed in Crawford County. Accordingly, the trial court had jurisdiction to accept his pleas and enter a sentence. Because the Crawford County Court of Common Pleas had personal and subject-matter jurisdiction over Owens's original change of plea and sentencing proceedings, the Supreme Court of Ohio's holding in *Harper* dictates that Owens's convictions were voidable, not void, which would subject his claim to res judicata. * * * Owens could have challenged any defect in the plea colloquy on direct appeal, but he failed to do so. Thus, Owen's present challenge of his original plea colloquy is barred by res judicata. *Id.* at ¶ 17, 19.

{¶ 13} "Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or *could have been raised* by the defendant * * * on an appeal from that judgment." (Emphasis added.) *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus. Res judicata has been specifically found to bar the relitigation of constitutional issues, including claims that the accused's guilty

pleas were not knowingly, intelligently, and voluntarily made. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 59-60.

{¶ 14} Here, Boyd could have challenged any defect in the plea colloquy, including the trial court's alleged failure to notify him of his right to subpoena witnesses, on direct appeal, but he failed to do so. Therefore, Boyd's present challenge regarding his plea colloquy is barred by res judicata.

{¶ 15} Dismissal of an original action is "appropriate if after presuming the truth of all material factual allegations of [relators'] petition and making all reasonable inferences in their favor, it appear[s] beyond doubt that they could prove no set of facts entitling them to the requested extraordinary relief." *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶ 14. We find such circumstances present here, and we therefore dismiss, sua sponte, Boyd's complaint for a writ of prohibition. Costs are taxed against Boyd.

{¶ 16} The clerk is hereby directed to immediately serve upon all other parties a copy of the writ in a manner prescribed by Civ.R. 5(B).

Writ dismissed.

Thomas J. Osowik, J.

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JUDGE

Christine E. Mayle, J.

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JUDGE

Myron C. Duhart, P.J.
CONCUR.

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JUDGE