

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
CARROLL COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JAMES M. PARKS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY **Case No. 23 CA 0965**

Criminal Appeal from the
Court of Common Pleas of Carroll County, Ohio
Case No. 2003CR04477

BEFORE:

Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed.

Atty. Steven D. Barnett, Carroll County Prosecutor and *Atty. Michael J. Roth*, Assistant
Prosecutor, 7 East Main Street, Carrollton, Ohio 44615, for Plaintiff-Appellee

James M. Parks, *Pro se*, Defendant-Appellant

Dated: December 20, 2023

WAITE, J.

{¶1} This appeal stems from the attempt by pro se Appellant James M. Parks to obtain public records from his 2004 Carroll County criminal case, Case No. 2003CR4477. Appellant was convicted by a jury in Columbiana County in 2004 for forcible rape of an eight-year-old boy and was sentenced to life in prison. Soon after this conviction, he pleaded guilty to six counts of rape of the same victim in Carroll County and was sentenced to life in prison with parole eligibility after 20 years. His rape convictions have been before this Court many times.

{¶2} In this particular instance, he made a public records request to the Carroll County Prosecuting Attorney's office for all records in his criminal case, which was denied. The reason for the request was to challenge the factual basis for his indictment in Carroll County. Appellant alleged that no crimes actually occurred in Carroll County. After his records request was denied, he filed a motion seeking an order for the production of records in the Court of Common Pleas pursuant to R.C. 149.43(B)(8). This was also denied, leading to the current appeal.

{¶3} According to R.C. 149.43(B)(8), Appellant was required to obtain a finding from the trial court that his records request was in support of a justiciable claim. This means that he had an active claim he was trying to support, that the claim was legally justiciable, and that the records request was necessary to support the claim. Appellant has no claim or action pending that would be in need of such records, and has presented a legal theory that cannot be supported in law. The trial court was within its discretion to deny Appellant's motion, and the judgment of the trial court is affirmed.

Facts and Procedural History

{¶4} On February 21, 2023, Appellant filed a Motion for the Production of Records in his criminal case, Carroll County Case No. 2003CR4477. The final order in that case was filed on March 5, 2004. The case was appealed and the judgment was affirmed on December 23, 2005. *State v. Parks*, 7th Dist. Columbiana No. 04 CA 803, 2005-Ohio-6926. His motion for production of records alleged that he had made a request for public records from the prosecutor's office on January 6, 2023, and it was denied. He stated that the purpose of the request was to determine whether any criminal activity actually took place in Carroll County and whether the trial court had subject matter jurisdiction over his case.

{¶5} He requested all investigative reports and work product, including the original complaint, affidavits, bill of particulars, work product from police and detectives, witness and victim statements, and all reports including sheriff's reports. He stated that he was making the request in his criminal case under the requirements of R.C. 149.43(B)(8), which requires an incarcerated person to obtain a finding from the trial judge who imposed sentence that the information sought is necessary to support a justiciable claim. The trial judge found the alleged reason for the request was without merit and non-justiciable. The motion was denied on March 30, 2023. This timely appeal followed. Appellant presents one assignment of error for review.

Standard of Review

{¶6} A mandamus action is typically the appropriate remedy to compel compliance when a public records request under R.C. 149.43 is denied. *State ex rel. Physicians Commt. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees*, 108

Ohio St.3d 288, 2006-Ohio-903, 843 N.E.2d 174, ¶ 7. “In a public-records mandamus case, the relator bears the burden of showing a clear legal right to access the requested records and a clear legal duty on the public office's part to afford that access.” *State ex rel. Griffin v. Sehlmeier*, 167 Ohio St.3d 566, 2022-Ohio-2189, 195 N.E.3d 130, ¶ 9.

{¶7} When an incarcerated person is making the request, a different procedure is utilized. Pursuant to R.C. 149.43(B)(8), the inmate must file a motion with the trial judge in his original case seeking the court make a finding the records are necessary to support a justiciable claim. An appellate court reviews a trial court's decision on whether the inmate requesting these records established a justiciable claim under an abuse of discretion standard. *State v. Hill*, 10th Dist. Franklin No. 22AP-576, 2023-Ohio-1954, ¶ 39. “A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary.” *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34.

ASSIGNMENT OF ERROR

APPELLANT WAS DENIED DUE PROCESS AND THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED A PUBLIC RECORDS REQUEST IN SUPPORT OF A JUSTICIABLE CLAIM WHEN THE DENIAL WAS BASED ON A FALSE STATEMENT OF LAW.

{¶8} Appellant pleaded guilty and was sentenced in Carroll County to six counts of rape. He was also convicted of rape by a jury in Columbiana County. Both cases were affirmed on appeal. *State v. Parks*, 7th Dist. Carroll No. 04 CA 803, 2005-Ohio-6926, appeal not allowed, 110 Ohio St.3d 1468, 2006-Ohio-4288, 852 N.E.2d 1215. He filed a

motion to reopen the appeal, which was denied, and that judgment was affirmed on appeal. *State v. Parks*, 7th Dist. Carroll No. 04 CA 803, 2006-Ohio-7269, ¶ 1. He filed a motion to withdraw his plea, which was denied. That judgment was affirmed on appeal. *State v. Parks*, 7th Dist. Carroll No. 08 CA 857, 2009-Ohio-4817. He filed a motion to vacate a void judgment, which was treated as a petition for postconviction relief. The motion was denied, and that judgment was upheld on appeal. *State v. Parks*, 7th Dist. Carroll No. 11 CA 873, 2012-Ohio-3011. In that motion, he challenged many aspects regarding the initiation of his criminal case, citing to some of the documents that he is requesting in the instant public records request. Appellant filed multiple federal habeas actions challenging his guilty plea and the effectiveness of his counsel. Those actions were dismissed. *Parks v. Bobby*, 545 Fed.Appx. 478 (6th Cir.2013); *Parks v. Bobby*, N.D. Ohio No. 5:07CV2596, 2011 WL 646795.

{¶9} Appellant argued in his motion for production of documents that he was never provided information or evidence showing that any criminal conduct occurred in Carroll County. Therefore, Carroll County had no jurisdiction over him. He makes that same argument on appeal. He believes that this allegation presented a justiciable claim that should have been recognized by the trial court. He requested "the investigative report" on his case, as well as "any/all investigative work product related to the case." (2/21/2023 Motion, Exh. 1.)

{¶10} The law regarding inmate requests for records from their own criminal case is clear and is stated in R.C. 149.43(B)(8), which provides:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a

juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

{¶11} If the public records request by an inmate concerning his criminal case is initially denied, R.C. 149.43(B)(8) requires the inmate to file a motion in his original case requesting a finding from the trial judge that the records request is being made because the records are necessary to support a justiciable claim. Assuming *arguendo* that the records being sought are public records, R.C. 149.43(B)(8) requires an incarcerated person to obtain a finding from the sentencing judge that: the inmate has a claim that is being pursued; the claim is justiciable; and the records being sought are necessary to support that justiciable claim.

{¶12} In the absence of the necessary finding by the sentencing judge required by R.C. 149.43(B)(8), an inmate is not entitled to the requested records. *State ex rel. Fernbach v. Brush*, 133 Ohio St.3d 151, 2012-Ohio-4214, 976 N.E.2d 889, ¶ 1-2. "[T]here is no duty to provide public records requested by an inmate unless" the inmate has

complied with R.C. 149.43(B)(8) and has obtained the proper finding by the trial court. *McCain v. Huffman*, 151 Ohio St.3d 611, 2017-Ohio-9241, 91 N.E.3d 749, ¶ 12.

{¶13} R.C. 149.43(B)(8) “creates a heightened standard for convicted inmates requesting copies of public records concerning a criminal investigation or prosecution.” *State v. Heid*, 4th Dist. No. 14CA3655, 2015-Ohio-1467, ¶ 12.

{¶14} "The General Assembly clearly evidenced a public-policy decision to restrict a convicted inmate's unlimited access to public records in order to conserve law enforcement resources." *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 14. The language of R.C. 149.43(B)(8) is “broad and encompassing.” *State ex rel. Ware v. Giavasis*, 160 Ohio St.3d 383, 2020-Ohio-3700, 157 N.E.3d 710, ¶ 6.

{¶15} The phrase "justiciable claim" is not defined in the public records statute. It has been construed to mean a claim that is properly brought before a court of law and is capable of being disposed of judicially. *State v. Heid*, 4th Dist. Scioto No. 14CA3668, 2015-Ohio-1502.

{¶16} "Establishing a justiciable claim ordinarily involves identifying a 'pending proceeding with respect to which the requested documents would be material.' " *State v. Rodriguez*, 6th Dist. Wood No. WD-13-026, 2014-Ohio-1313, ¶ 5, quoting *State v. Wilson*, 2d Dist. Montgomery No. 23247, 2009-Ohio-7035, ¶ 5. "A justiciable claim does not exist where an inmate fails to identify 'any pending proceeding with respect to which the requested documents would be material * * *.' " *State v. Atakpu*, 2d Dist. Montgomery No. 25232, 2013-Ohio-4392, ¶ 9, citing *State v. Gibson*, 2d Dist. Champaign No. 2006-CA-37, 2007-Ohio-7161, ¶ 14.

{¶17} As a preliminary matter, Appellant did not indicate in his motion that there was any pending proceeding which might relate to his records request. For this reason alone, the trial court was within its discretion to overrule Appellant's motion.

{¶18} Appellant's purported basis for making the records request was to find evidence to show no crime was committed in Carroll County, and therefore, to prove that the grand jury and the court had no jurisdiction over him. Appellant was convicted based on a guilty plea, and his conviction and sentence were litigated to finality in this Court and through ancillary actions. "[I]t is difficult to conceive how [the defendant] could show that the documents he sought were necessary to support a justiciable claim or defense, inasmuch as [his] guilty pleas constitute a complete admission of guilt. Crim.R. 11(B)(1). Thus, any claims pertaining to factual guilt, such as witness statements or text messages, are irrelevant." *State v. Boyle*, 2nd Dist. Greene No. 2022-CA-19, 2022-Ohio-2887, ¶ 18.

{¶19} Simply because Appellant posits that he hopes to use the records to find facts that would undermine the "subject matter jurisdiction" of the trial court does not convert his argument to a justiciable claim. Subject matter jurisdiction "connotes the power to hear and decide a case upon its merits." *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). A court of common pleas has jurisdiction over felony cases. R.C. 2931.03; *Smith v. Sheldon*, 157 Ohio St.3d 1, 2019-Ohio-1677, 131 N.E.3d 1, ¶ 8. Pursuant to Section X, Article I, of the Ohio Constitution and Crim.R. 7, the initiation of felony charges shall be by indictment. A court's "felony jurisdiction is invoked by the return of a proper indictment by the grand jury of the county." *Click v. Eckle*, 174 Ohio St. 88, 89, 186 N.E.2d 731 (1962).

{¶20} All defenses and objections based on deficiencies in the institution of the prosecution or challenges to the indictment must be made in pretrial motions. Crim.R. 12(C). "[F]ailure to timely object to the allegedly defective indictment constitutes a waiver of the issues involved." *State v. Biros*, 78 Ohio St.3d 426, 436, 678 N.E.2d 891 (1997). Any litigation of this issue would need to have taken place in one of the many prior appeals and collateral attacks Appellant has made on his conviction.

{¶21} Further, the very fact that Appellant was indicted by a grand jury defeats his allegation that there were no facts to support the jurisdiction of the trial court over him. "[A]n indictment, fair upon its face, and returned by a properly constituted grand jury, conclusively determines the existence of probable cause to believe the defendant perpetrated the offense alleged therein." *State v. Winegarner*, 2023-Ohio-319, 208 N.E.3d 88, ¶ 30 (8th Dist.), citing *Gerstein v. Pugh*, 420 U.S. 103, 117, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975). "No case has been cited, nor have we been able to find any, furnishing an authority for looking into and revising the judgment of the grand jury upon the evidence, for the purpose of determining whether or not the finding was founded upon sufficient proof * * *." *Costello v. United States*, 350 U.S. 359, 362–63, 76 S.Ct. 406, 100 L.Ed. 397 (1956). " '[A] challenge to the reliability or competence of the evidence presented to the grand jury' will not be heard." *United States v. Williams*, 504 U.S. 36, 54, 112 S.Ct. 1735, 118 L.Ed.2d 352 (1992), quoting *Bank of Nova Scotia v. United States*, 487 U.S. 250, 261, 108 S.Ct. 2369, 101 L.Ed.2d 228 (1988).

{¶22} Finally, Appellant actually alleges that he wants to find facts to prove that the venue of the litigation in Carroll County was improper. Venue and subject matter jurisdiction are very distinct legal concepts. "Subject-matter jurisdiction of a court

connotes the power to hear and decide a case upon its merits, while venue connotes the locality where the suit should be heard." *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). "Venue is a personal privilege, and is a fact which the state must prove beyond a reasonable doubt unless waived by the accused; it is neither a jurisdictional issue nor a material element of a criminal offense and therefore, where a defendant in a criminal case enters a voluntary plea of guilty, the plea precludes the defendant from challenging the factual issue of venue." *State v. Reed*, 7th Dist. Jefferson No. 96-JE-25, 1997 WL 545344, *2. Whether or not Appellant could find the evidence he seeks in public records, it does not change the fact that he pleaded guilty to rape in Carroll County, and thus waived any challenge to venue in Carroll County.

{¶23} Appellant's criminal case has been litigated many times in various state and federal courts. Any questions regarding the factual validity of the indictment against him, or to the venue of the criminal proceedings, should have been raised in any of those prior actions and appeals. It is clear from the case law cited above, though, that any such challenge would have been fruitless, as the issue is non-justiciable because he pleaded guilty to the rape charges. For all the reasons stated above, the trial court was within its discretion to find that Appellant did not present a justiciable claim, and Appellant's assignment of error is overruled.

Conclusion

{¶24} Appellant is appealing the denial of his motion for production of documents related to his conviction for rape in Carroll County. The trial court, pursuant to R.C. 149.43(B)(8) examined Appellant's request and found that he failed to assert a justiciable claim. Appellant argues on appeal that the mere fact that he is challenging the subject

matter jurisdiction of the court by showing no crime occurred in Carroll County should be enough. Appellant is mistaken. He has not alleged that there is any active proceeding in which the records could be used. He has not alleged any justiciable claim, particularly since his factual challenge to the grand jury indictment is frivolous on its face. Any issue that Appellant could possibly raise regarding the indictment should have been raised in the many prior actions and appeals he has litigated regarding his rape case. Finally, Appellant is actually searching for information to prove improper venue, and he waived any argument regarding venue by pleading guilty. Appellant's assignment of error has no merit and the judgment of the trial court is affirmed.

Robb, J. concurs.

D'Apolito, P.J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Carroll County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.