

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE OF OHIO, EX REL.,	:	
DAMIEN L. PETERSON,	:	
Relator,	:	No. 112792
v.	:	
THE HONORABLE JUDGE	:	
SHERRIE M. MIDAY,	:	
Respondent.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT:** COMPLAINT DISMISSED  
**DATED:** August 22, 2023

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Writ of Prohibition  
Motion Nos. 565702 and 565827  
Order No. 566639

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***Appearances:***

Damien L. Peterson, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, *for respondent*.

EILEEN T. GALLAGHER, J.:

{¶ 1} Damien L. Peterson, the relator, has filed a complaint for a writ of prohibition. Peterson argues that Judge Sherrie M. Miday, the respondent, is

without jurisdiction to preside over *State v. Peterson*, Cuyahoga C.P. No. CR-19-639520-A. Peterson argues that the lack of jurisdiction requires this court grant a writ of prohibition and vacate the conviction and sentence imposed in CR-19-639520-A. Peterson also argues for this court to prevent Judge Miday from exercising any future jurisdiction in CR-19-639520-A. Judge Miday has filed a motion to dismiss that is granted for the following reasons.

### **I. Complaint for Prohibition — Principles**

{¶ 2} The principles governing prohibition are well established. Prohibition requires that the relator demonstrate (1) the respondent against whom it is sought is about to exercise judicial power, (2) the exercise of such power is unauthorized by law, and (3) there exists no other adequate remedy in the ordinary course of the law. *State ex rel. Largent v. Fisher*, 43 Ohio St.3d 160, 540 N.E.2d 239 (1989). Prohibition will not lie unless it clearly appears that the court has no jurisdiction of the cause that it is attempting to adjudicate, or the court is about to exceed its jurisdiction. *State ex rel. Ellis v. McCabe*, 138 Ohio St. 417, 35 N.E.2d 571 (1941). The writ will not issue to prevent an erroneous judgment, or to serve the purpose of appeal, or to correct mistakes of the lower court in deciding questions within its jurisdiction. *State ex rel. Sparto v. Juvenile Court of Darke Cty.*, 153 Ohio St. 64, 65, 90 N.E.2d 598 (1950). Furthermore, it should be used with great caution and not issue in a doubtful case. *State ex rel. Gilligan v. Hoddinott*, 36 Ohio St.2d 127, 304 N.E.2d 382 (1973); *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas*, 137 Ohio St. 273, 28 N.E.2d 641 (1940).

## II. Analysis

{¶ 3} Herein, Peterson raises four claims in support of his complaint for prohibition:

- 1) Peterson was arrested without a warrant;
- 2) Peterson was not bound over from the Shaker Heights Municipal Court to the Cuyahoga County Court of Common Pleas;
- 3) Peterson was not allotted a preliminary hearing in CR-19-639520; and
- 4) The jurisdictional-priority rule prevented indictment of Peterson in CR-19-639520.

{¶ 4} Each of the four claims raised by Peterson, in support of his complaint for prohibition, have been previously raised before this court and found to be without any merit. Thus, Peterson's arguments in support of his complaint for prohibition are barred by the doctrine of res judicata. The Supreme Court of Ohio reaffirmed the application of the doctrine of res judicata and held that

[t]he doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel. *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 381, 1995 Ohio 331, 653 N.E.2d 226. Claim preclusion prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action. *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.* (1998), 81 Ohio St.3d 392, 395, 1998 Ohio 435, 692 N.E.2d 140. Where a claim could have been litigated in the previous suit, claim preclusion also bars subsequent actions on that matter. *Grava*, 73 Ohio St.3d at 382, 653 N.E.2d 226.

Issue preclusion, on the other hand, serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies. *Fort*

*Frye*, 81 Ohio St.3d at 395, 692 N.E.2d 140. Issue preclusion applies even if the causes of action differ. *Id.*

*O’Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59, 2007-Ohio-1102, 862 N.E.2d 803.

{¶ 5} Peterson has previously attempted to obtain relief, based upon the claims argued in the present complaint for prohibition, by way of two appeals and an App.R. 26(B) application for reopening filed in the Eighth District Court of Appeals.<sup>1</sup> In fact, the doctrine of res judicata was previously applied to Peterson’s claims in *State v. Peterson*, 8th Dist. Cuyahoga No. 112055, 2023-Ohio-823 (“*Peterson III*”) and *State v. Peterson*, 8th Dist. Cuyahoga No. 109306, 2022-Ohio-2766 (“*Peterson II*”). See also *State v. Peterson*, 8th Dist. Cuyahoga No. 109306, 2022-Ohio-835 (“*Peterson I*”), wherein this court found that Peterson was not denied due process of law by way of a defective complaint and the failure of the government to provide a preliminary hearing prior to indictment. In *Peterson III*, this court held that

[i]n Peterson’s motion to vacate void judgment, the trial court’s denial of which forms the basis for the case at hand, Peterson argued that his convictions and sentence are void “due to the Shaker Heights Municipal Court’s failure to relinquish jurisdiction to the Cuyahoga County Court of Common Pleas.” Peterson further argued that he “never received his entitled preliminary hearing, nor did he waive said preliminary hearing, for was [he] directly indicted on the charge in the Shaker Heights Municipal Court \* \* \*.”

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<sup>1</sup> The claims currently presented by Peterson, in support of his complaint for prohibition, have also been argued in *State ex rel. Peterson v. Miday*, 8th Dist. Cuyahoga No. 109982, 2020-Ohio-5514; *Peterson v. Foley*, 9th Dist. Lorain No. 20CA011705, 2021-Ohio-2455.

This argument was reviewed and rejected on the merits by this court in *Peterson I*. The third assignment of error in *Peterson I* follows: \* \* \* Specifically, Peterson argued that “the criminal complaint filed in the Shaker Heights Municipal Court was defective and \* \* \* he was improperly denied a preliminary hearing.” *Id.* at ¶ 21. In *Peterson I*, this court found that argument to be without merit, because (1) the Shaker Heights Municipal Court proceedings were not part of the case at issue, and (2) the indictment filed in the Cuyahoga County Court of Common Pleas case at issue rendered any defects in the initial complaint moot. *Id.* at ¶ 21, 22. *See also* Crim.R. 5(B)(1) (stating that the preliminary hearing in felony cases “shall not be held \* \* \* if the defendant is indicted”).

Additionally, this court determined that res judicata barred Peterson from raising this same argument again in *Peterson II*. This court opined that the “issues raised by Peterson \* \* \* basically involve \* \* \* a defective preliminary hearing in the Shaker Heights Municipal Court and a lack of jurisdiction on the part of the Cuyahoga County Common Pleas Court to indict, bring to trial, and convict him of the offenses” concerning his armed robbery spree. *Peterson II* at ¶ 5. This court held that the “doctrine of res judicata prevents further review of the issues relating to a preliminary hearing in the Shaker Heights Municipal Court because the issues have already been addressed by this court on direct appeal and found to be without merit.”

*Peterson III* at ¶ 10-12. Res judicata bars further consideration of Peterson’s claims in support of his complaint for prohibition.

{¶ 6} We also find that Judge Miday possesses original jurisdiction over all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas. R.C. 2901.12, 2931.03. Judge Miday sits as an elected judge of the Common Pleas Court of Cuyahoga County. Judge Miday is cloaked with the necessary subject-matter jurisdiction to preside over CR-19-639520-A. *State ex rel. McMinn v. Whitfield*, 27

Ohio St.3d 4, 500 N.E.2d 875 (1986); *State v. Cintron*, 8th Dist. Cuyahoga No. 110600, 2022-Ohio-305.

### **III. Vexatious Litigator Declaration**

{¶ 7} Based upon the fact that Peterson has persistently and without any legal basis attempted to litigate the claims of improper bindover, trial court's lack of jurisdiction, and lack of a preliminary hearing, we declare Peterson a vexatious litigator under Loc.App.R. 23. The following restrictions are imposed upon Peterson pursuant to Loc.App.R. 23(B) and (C) when filing any new original action: 1) deposit with the clerk of courts the sum of \$175.00 to secure costs per Loc.App.R. 45(C) and 3(A) or file with the clerk of courts a sworn affidavit (affidavit of indigency) or an affirmation of the inability to secure costs by prepayment per Loc.App.R. 45(C)(1) and 3(A)(1); 2) simultaneously with the filing of any original action, seek leave of court to proceed per Loc.App.R. 23(B). Peterson, through his request for leave of court, must establish that any newly filed original action is not frivolous or is not filed for delay, harassment, or any other improper purpose.

{¶ 8} Accordingly, we grant Judge Miday's motion to dismiss and dismiss Peterson's complaint for prohibition. Costs to Peterson. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶ 9} Complaint dismissed.

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EILEEN T. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and  
MICHAEL JOHN RYAN, J., CONCUR