[Cite as *State ex rel. Taylor v. Miday*, 2024-Ohio-6203.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO, EX REL. DAVID D. TAYLOR	:	
	:	
Relator,	:	No. 114584
v.	:	
HONORABLE SHERRI MIDAY,	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: WRITS DENIED
DATED: February 5, 2025

Writs of Mandamus and Prohibition
Motion No. 580196
Order No. 581458

Appearances:

David D. Taylor, *pro se.*

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

MICHAEL JOHN RYAN, J.:

{¶ 1} Relator, David D. Taylor ("Taylor"), seeks writs of mandamus and/or prohibition directing respondent, Judge Sherri Miday (the "respondent"), to vacate

an unlawful sentence. For the following reasons, this court grants the respondent's dispositive motion and denies the application for writs of mandamus and prohibition.

I. Procedural and Factual History

{¶ 2} In January 1993, Taylor pleaded guilty to one count of aggravated robbery in violation of R.C. 2911.01(A)(1), and one count of kidnapping in violation of R.C. 2905.01(A)(2). Both offenses were aggravated felonies of the first degree. Subsequently, Taylor was sentenced to "a term of ten (10) to twenty-five (25) years" in prison on each count, to be served consecutively. The sentence was imposed by the respondent's predecessor, Judge Lillian J. Greene.

{¶ 3} Taylor did not immediately file a direct appeal from his convictions. In September 2020, however, Taylor sought leave to file a delayed appeal from his sentence pursuant to App.R. 5(A)(1) and (D)(1). In October 2020, this court denied Taylor's motion and dismissed the untimely appeal.

{¶ 4} On November 22, 2024, Taylor commenced this mandamus and prohibition action against respondent, seeking to vacate his prison sentence. Taylor argues he is entitled to a resentencing hearing because his sentence was not authorized by law and did not comport with the plain language of the applicable sentencing statute. Taylor summarized his position as follows:

> [A]ccording to the law at the time, Cuyahoga County Common Pleas Court [trial judge] attempted to impose a sentence in Taylor's criminal case in Case No. CR-282277. At the time every judge in the State of Ohio either known or should have known what the minimum term of imprisonment to be imposed for a first degree felony. Therefore, [the

> trial judge] committed plain error when she sentenced Taylor in excess of the minimum sentence provided under R.C. 2929.11(B)(4) of four (4) to seven (7) years as provided by the law at the time.

{¶ 5} On December 13, 2024, the respondent, through the Cuyahoga County Prosecutor, moved for summary judgment. The respondent argues that Taylor is not entitled to a writ of mandamus or prohibition because (1) the trial court imposed a prison term within the applicable sentencing range for each aggravated felony of the first degree, (2) the trial court had both subject-matter and personal jurisdiction at the time of sentencing, and (3) Taylor had an adequate remedy in the ordinary course of law by way of direct appeal. The motion for summary judgment incorporated relevant documents from the trial-court record, including copies of (1) the original indictment, (2) the sentencing journal entry, (3) Taylor's motion for leave to file a delayed appeal, and (4) the transcript of proceedings.

{¶ 6} On January 16, 2025, Taylor filed a brief in opposition to summary judgment, reiterating his contention that the trial court erred by failing to impose "a lesser sentence under R.C. 2929.11(B)(4)." Taylor further argued, for the first time, that his plea agreement was "unauthorized by law" because he was convicted of an aggravated-felony offense despite the deletion of the attendant firearm specifications.

II. Law and Analysis

A. Standard of Review

{¶ 7} Original actions in mandamus and prohibition ordinarily "proceed as any civil action under the Ohio Rules of Civil Procedure." Loc.App.R. 45(D)(2)(c).

Thus, the action may be resolved on summary judgment. *See State ex rel. Scripps Media v. Hunter*, 2013-Ohio-5895, ¶ 31 (1st Dist.).

{¶ 8} Under Civ.R. 56(C), summary judgment is appropriate when: "(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made." *State ex rel. Parsons v. Fleming*, 68 Ohio St.3d 509, 511 (1994). "[I]n an original action, the summary judgment standard pertains to determining whether any genuine issues of material fact exist regarding the factors necessary for issuance of the requested writ." *State ex rel. Northcoast Anesthesia Providers, Inc. v. Calabrese*, 2015-Ohio-4910, ¶ 14 (8th Dist.).

B. Writ of Mandamus

{¶ 9} As mentioned, Taylor has petitioned this court for a writ of mandamus "directing [the respondent]" to "vacate the void January 28, 1993 sentencing entry and resentence [him] according to the law of today." Upon consideration, we find Taylor is unable to establish the requirements for mandamus relief.

{¶ 10} A writ of mandamus is "a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specifically enjoins as a duty." R.C. 2731.01. "For a writ of

mandamus to issue, a relator must demonstrate that (1) the relator has a clear legal right to the relief prayed for, (2) respondent is under a corresponding clear legal duty to perform the requested acts, and (3) relator has no plain and adequate legal remedy." *State ex rel. Serv. Emp. Internatl. Union, Dist. 925 v. State Emp. Relations Bd.*, 81 Ohio St.3d 173, 176 (1998). A writ of mandamus is not a substitute for appeal and does not lie to correct errors or procedural irregularities in the course of a case. *Garg v. Scott*, 2024-Ohio-1595, ¶ 7 (8th Dist.). Thus, a writ of mandamus is an extraordinary remedy that should be exercised with caution and issued only when the right to extraordinary relief is clear. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 166 (1977).

{¶ 11} In support of his mandamus claim, Taylor contends that his sentence is void as a matter of law because the indefinite term of 10-to-25 years imposed on each count exceeded the sentencing range designated in former R.C. 2929.11(B)(4). Thus, Taylor asserts that the respondent "has a clear legal duty to vacate the void judgment entry and schedule a resentencing hearing." Taylor further claims that he has no adequate remedy at law because "he is not able to address this issue through appeal, post-conviction petition, or any other non-extraordinary remedy."

{¶ 12} Preliminarily, we find the materials attached to the respondent's motion for summary judgment unambiguously demonstrate that Taylor's reliance on R.C. 2929.11(B)(4) is misplaced. Taylor correctly states that former R.C. 2929.11(B)(4) set forth the applicable sentencing range for felonies of the first degree. The statue provided as follows:

> For a felony of the first degree, the minimum term shall be four, five, six, or seven years, and the maximum term shall be twenty-five years.

Contrary to Taylor's interpretation of the record, however, he did not plead guilty to felonies of the first degree. Rather, Taylor pleaded guilty to *aggravated* felonies of the first degree. (State exhibits B and C; plea hearing tr. 15-17.) Accordingly, Taylor's sentence was governed by former R.C. 2929.11(B)(1)(a), which stated:

> For an aggravated felony of the first degree:
>
> If the offender has not previously been convicted of or pleaded guilty to any aggravated felony of the first, second, or third degree, aggravated murder or murder . . . the minimum term, which may be imposed as a term of actual incarceration, shall be *five, six, seven, eight, nine, or ten years*, and the maximum term shall be twenty-five years.

(Emphasis added.)

{¶ 13} Based on the plain language of the governing statute, we find the predecessor judge imposed a prison term on each felony offense that fell within the applicable sentencing range designated in former R.C. 2929.11(B) for aggravated felonies of the first degree. Relatedly, and contrary to Taylor's assertion herein, the State's recommendation to delete the attendant firearm specifications as part of the negotiated plea agreement did not preclude a conviction for aggravated robbery in violation of R.C. 2911.01(A)(1). *See State v. Caraballo*, 2008-Ohio-5248, ¶ 33 (8th Dist.) ("[A]n offense with a deadly weapon may stand with or without a firearm specification."). Under these circumstances, Taylor has failed to demonstrate that he has a clear legal right to the relief prayed for or that respondent has a corresponding legal duty to vacate his sentence.

{¶ 14} Likewise, the Ohio Supreme Court has recognized that "'sentencing errors are generally not remediable by extraordinary writ, because the defendant usually has an adequate remedy at law available by way of direct appeal.'" *State ex rel. Green v. Wetzel*, 2019-Ohio-4228, ¶ 10, quoting *State ex rel. Ridenour v. O'Connell*, 2016-Ohio-7368, ¶ 3. Here, Taylor had an adequate remedy at law because he could have challenged his plea and resulting sentence on direct appeal, but failed to do so. *Id.*, citing *State ex rel. Hunter v. Binette*, 2018-Ohio-2681, ¶ 20; *see also State ex rel. Hughley v. McMonagle*, 2009-Ohio-4088, ¶ 1 (affirming denial of a writ of mandamus to correct an alleged sentencing error because the relator had an adequate remedy at law by way of appeal or a petition for postconviction relief); *State ex rel. Love v. O'Donnell*, 2017-Ohio-5659, ¶ 5 (a challenge to sentencing must be raised on appeal rather than in a mandamus action).

{¶ 15} Taylor attempts to avoid the implications of his failure to file a timely direct appeal by suggesting that "a final appealable order was never issued in this case." According to Taylor, a final appealable order will not arise until the respondent vacates the allegedly void sentencing entry and "imposes a sentence that comports with the plain language of the law." We find no merit to this position. As discussed further below, we find the trial court had jurisdiction to impose Taylor's sentence, rendering the sentence merely voidable and not void. In addition, the judgment of conviction properly set forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk. *State v. Lester*, 2011-Ohio-5204, paragraph one of the

syllabus. Consequently, the judgment entry constituted a final order under R.C. 2505.02, thereby triggering Taylor's right to file a timely appeal pursuant to App.R. 4(A).

C. Writ of Prohibition

{¶ 16} Taylor further seeks a writ of prohibition, alleging that the sentencing judge patently and unambiguously lacked the jurisdiction to enter a void sentence. We find no merit to Taylor's argument.

{¶ 17} "The purpose of a writ of prohibition is to restrain inferior courts from exceeding their jurisdiction." *State ex rel. Roush v. Montgomery*, 2019-Ohio-932, ¶ 5, citing *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 73 (1998). "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 (1950). To obtain a writ of prohibition, a relator must establish, by clear and convincing evidence, (1) the exercise of judicial power, (2) the exercise of that power is unauthorized by law, and (3) an injury would result from denial of the writ for which no other adequate remedy exists in the ordinary course of the law. *State ex rel. Edward Smith Corp. v. Marsh*, 2024-Ohio-201, ¶ 6.

{¶ 18} In many prohibition cases, the relator only seeks to prevent an anticipated judicial action. This reflects the well-established rule that the writ of prohibition provides a preventative rather than corrective remedy. *State ex rel. Feltner v. Cuyahoga Cty. Bd. of Revision*, 2020-Ohio-3080, ¶ 6. In this case,

however, Taylor seeks the writ to correct a past action. For a corrective writ of prohibition to issue, Taylor must demonstrate that the judge patently and unambiguously lacked jurisdiction to take the actions of which he complains. *Id.* at ¶ 6, 8. When a court is patently and unambiguously without jurisdiction to act whatsoever, the availability or adequacy of a remedy is immaterial to the issuance of a writ of prohibition. *State ex rel. Tilford v. Crush*, 39 Ohio St.3d 174, 176 (1988); and *State ex rel. Csank v. Jaffe*, 107 Ohio App.3d 387, 390 (8th Dist.1995).

{¶ 19} Relevant to the jurisdictional arguments posed by Taylor, it is well settled that a sentence is void only "when a sentencing court lacks jurisdiction over the subject-matter of the case or personal jurisdiction over the accused." *State v. Harper*, 2020-Ohio-2913, ¶ 42. When a sentencing court has jurisdiction to act, sentencing errors render the sentence "voidable, not void." *Id.* at ¶ 5. *See State v. Henderson*, 2020-Ohio-4784, ¶ 1 (following *Harper* to hold that "sentences based on an error, including sentences in which a trial court fails to impose a statutorily mandated term, are voidable if the court imposing the sentence has jurisdiction over the case and the defendant").

{¶ 20} As a sitting judge of the Cuyahoga County Court of Common Pleas, the respondent's predecessor possessed subject-matter jurisdiction over Tayor's criminal case and personal jurisdiction over Taylor. *See* R.C. 2931.03; *State ex rel. Pruitt v. Donnelly*, 2011-Ohio-4203. Any error in sentencing did not deprive the trial court of subject-matter jurisdiction. *State ex rel. Jackson v. Ambrose,* 2016-Ohio-5937, ¶ 2 (8th Dist.). Accordingly, Taylor has failed to demonstrate that the

trial court was unable to exercise judicial power based on a patent and unambiguous lack of jurisdiction. And, as previously stated, because any sentencing error rendered the sentence merely voidable, Taylor had an adequate remedy in the ordinary course of the law by way of direct appeal. *See State ex rel. Hughes v. Cuyahoga Cty.*, 2016-Ohio-5936, ¶ 3 (8th Dist.) ("Any sentencing errors, that are committed by a court possessing proper jurisdiction over a criminal matter, may not be remedied through an extraordinary writ."); *Smith v. Warren*, 89 Ohio St.3d 467, 468 (2000) ("Appeal, not prohibition, is the remedy for the correction of errors or irregularities of a court having proper jurisdiction."). For these reasons, Taylor is not entitled to a writ of prohibition against the respondent.

III. Conclusion

{¶ 21} Based on the foregoing, this court grants the respondent's dispositive motion and denies this application for writs of mandamus and prohibition. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of the judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 22} Writs denied.

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MICHAEL JOHN RYAN, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
LISA B. FORBES, J., CONCUR