

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO EX REL.  
NICHELLE C. SCOTT,

	:	
Relator,	:	No. 116037
v.	:	
JUDGE J.J. COSTELLO,	:	
Respondent.	:	

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT:** WRIT DISMISSED  
**DATED:** April 9, 2026

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Writs of Prohibition and Mandamus  
Order No. 594218  
Motion No. 592619

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***Appearances:***

Nichelle C. Scott, *pro se*.

Montgomery Jonson LLP, Cooper D. Bowen, and Linda L.  
Woeber, *for respondent*.

MARY J. BOYLE, J.:

{¶ 1} On January 16, 2026, the relator, Nichelle C. Scott (“Scott”), commenced this prohibition and mandamus action against the respondents, Judge James J. Costello and the Clerk of Court for the Cleveland Heights Municipal Court. She seeks to prohibit the judge from conducting any probation-violation

proceedings in the underlying case, *Cleveland Hts. v. Scott*, Cleveland Hts. M.C. No. TRC 25-02179. She argues that she did not receive proper notice of the probation-violation hearing scheduled for January 16, 2026. She seeks mandamus against the judge to accept and docket all filings, prepare the transcript at State's expense, enforce the plea as stated on the record, and reassign the case to a neutral judge. She seeks mandamus to compel the clerk to accept all filings tendered, to refrain from refusing or returning filings based on fee disputes because she is an indigent litigant, to process all filings and transmit all records to preserve her appellate rights, and to perform all duties pursuant to R.C. 1901.31 without obstruction or delay. On February 19, 2026, the respondents moved to dismiss. Scott filed briefs in opposition on March 3, and March 16, 2026, as well as a supplement on March 17, 2026. For the following reasons, this court grants the respondents' motion to dismiss.

#### I. FACTUAL AND PROCEDURAL BACKGROUND.

{¶ 2} In the underlying case in April 2025, Scott was charged with (1) operating a motor vehicle under the influence, a first-degree misdemeanor, under R.C. 4511.19, (2) consuming liquor in a motor vehicle, a fourth-degree misdemeanor under R.C. 4301.64, and (3) failing to maintain control of a motor vehicle, a fourth-degree misdemeanor under Cleveland Hts. Cod. Ord. 333.08. In a May 6, 2025 journal entry, the respondent judge noted that Scott waived her right to counsel in writing and that her attorney was withdrawn from the case. In that same entry, the respondent judge denied Scott's request for recusal noting that he could impartially,

competently, and diligently hear this case. He further noted that Scott was previously found indigent.

**{¶ 3}** On September 11, 2025, Scott entered a plea. The prosecution amended the first charge of operating under the influence to having physical control of a vehicle while under the influence, a first-degree misdemeanor under R.C. 4511.194. Scott pled no contest, and a visiting judge found her guilty. The other two charges were nolle. The judge imposed a \$1,000 fine with \$750 suspended and 180 days in jail with 177 days suspended. The remaining three days were also suspended with the condition that Scott complete a 72-hour driver intervention program within 60 days. The judge then imposed a 12-month community-control sanction, with six-months active probation and six months inactive. The sentence further specified that the defendant must abide by the law, comply with the rules of probation, and abstain from all nonprescribed drugs, but not from the use of alcohol. The sentence also terminated the administrative-license suspension.

**{¶ 4}** On September 29, 2025, Scott filed a request to enforce sentence agreement or in the alternative to vacate her plea and sentence. She argued that during the plea negotiations she did not agree to probation or drug and alcohol testing. She also requested a transcript of the sentencing hearing, which would validate her arguments. In a September 30, 2025 journal entry, Judge Costello explained the procedure for obtaining a transcript, including the following: “unless otherwise ordered, the cost for preparation of the transcripts of proceedings are to be borne by the requesting party. Any motion for the transcript at the State’s

expense shall include a completed Financial Disclosure Form available from the clerk.” On October 20, 2025, the judge denied the motions. He stated that a transcript was unnecessary because sentencing is left to the judge, despite whatever the parties’ “agreement” was.

{¶ 5} On October 28, 2025, Scott moved to declare her indigent and provide a transcript of the administrative-license suspension appeal hearing. On November 5, 2025, the respondent judge denied the motion because transcripts at State’s expense are only available for criminal matters and the administrative-license suspension is a civil matter. He also denied her second motion to enforce the plea agreement and for a transcript of the plea and sentencing hearing. He further noted that probation was still active and required her to submit to reasonable testing for nonprescribed drugs.

{¶ 6} In November, Scott filed an affidavit of disqualification in the Supreme Court of Ohio; Chief Justice Kennedy denied that on November 24, 2025. Also, Scott tried to file a notice of appeal on December 8, 2025, but this attempt was rejected because she tendered the improper filing fee of \$125.00.

{¶ 7} On December 30, 2025, the respondent judge ordered the probation department to set the matter for a probable-cause hearing on an alleged probation violation. The hearing was set for January 16, 2026. Scott filed a motion to dismiss the probation-violation hearing, as well as a motion to dismiss in another case, Cleveland Hts. M.C. No. TRD 24-03725. Scott presented an exhibit that indicated the latter was rejected for failing to pay the filing fee. In a January 14, 2026 journal

entry, the respondent judge denied the motion to dismiss the probation-violation hearing. He explained that this was a preliminary hearing the purpose of which is to inform the defendant of the reasons for the potential action and determine whether a further hearing on the probation matter should go forward.

{¶ 8} The probable-cause hearing occurred on January 23, 2026. The respondent judge noted that the defendant was present and “appraised of the ground on which the action was proposed.” The judge then found the issue moot. The terms of probation remained unchanged, and he ordered the defendant to complete the terms of the community-control sanctions.

{¶ 9} In February 2026, the probation department reported that Scott’s urinalysis specimen was unacceptable because it was diluted. The department called twice to advise her that she needed to resubmit. Scott did not respond. By February 12, 2026, Scott had been arrested on failure-to-appear warrants for case numbers TRD 25-06793 and TRD 25-07706. The court ordered her to provide a specimen for drug and alcohol testing, and she refused. Accordingly, the respondent judge set the matter for a contempt and probation-violation hearing the next day. In a February 13, 2026 journal entry, the respondent judge found Scott in contempt and that she had violated probation. He imposed concurrent sentences of 14 days in jail with credit for one day served for contempt and violating probation. He then ruled that her community control was terminated unsuccessfully.

## II. LEGAL ANALYSIS

{¶ 10} Scott's claim for prohibition is that based on her assessment that she was not given proper notice of the probation violation pursuant to *Morrissey v. Brewer*, 408 U.S. 471 (1972), the respondent judge lost jurisdiction to hold the hearings.

{¶ 11} The principles governing prohibition are well established. Its requisites are (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 is no adequate remedy at law. *State ex rel. Largent v. Fisher*, 43 Ohio St.3d 160 (1989). Furthermore, if a petitioner had an adequate remedy, relief in prohibition is precluded, even if the remedy was not used. *State ex rel. Leshner v. Kainrad*, 65 Ohio St.2d 68 (1981). Prohibition will not lie unless it clearly appears that the court has no jurisdiction over 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 (1941), paragraph three of the syllabus. "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). Furthermore, it should be used with great caution and not issue in a doubtful case. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas*, 137 Ohio St. 273 (1940). Nevertheless, 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 (1988); and *State ex rel. Csank v. Jaffe*, 107 Ohio App.3d 387 (8th Dist. 1995). However, absent such a patent and unambiguous lack of jurisdiction, a court having general jurisdiction of the subject matter of an action has authority to determine its own jurisdiction. A party challenging the court's jurisdiction has an adequate remedy at law via an appeal from the court's holding that it has jurisdiction. *State ex rel. Rootstown School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas*, 78 Ohio St.3d 489 (1997). Moreover, this court has discretion in issuing the writ of prohibition. *State ex rel. Gilligan v. Hoddinott*, 36 Ohio St.2d 127 (1973).

{¶ 12} In *Grundstein v. Carroll*, 2004-Ohio-2346 ( 8th Dist.), the relator commenced a writ of prohibition arguing that the judge did not have personal jurisdiction over him because he did not receive adequate notice of the alleged probation violation. This court rejected that argument holding that the respondent municipal court judge had the authority to conduct a probation-revocation hearing and that there was an adequate remedy at law through appeal, precluding prohibition. Scott concedes that the respondent judge has statutory authority and basic subject-matter jurisdiction over the matter. Issues concerning proper notice and procedure are to be resolved on appeal. *State v. Warren*, 1982 Ohio App. LEXIS 11999 (8th Dist. Apr. 8, 1982), and *State v. Hall*, 1999 Ohio App. LEXIS 507 (2d Dist. Feb. 19, 1999).

{¶ 13} Scott also argues that filing the writ stayed probation-violation hearings and invoked the transfer-of-jurisdiction principle. These arguments are ill-

founded. *France v. Celebrezze*, 2012-Ohio-2072, ¶ 6 (8th Dist.): “the filing of a complaint for an original action and/or an application for alternative writ does not automatically stay the underlying action.” It is when an appeal is taken, as compared to when a writ is filed, that the trial court is divested of jurisdiction except to take action in aid of the appeal. *Howard v. Catholic Soc. Servs. of Cuyahoga Cty.*, 70 Ohio St.3 141 (1994).

**{¶ 14}** Moreover, the matter is moot. The January probation hearings occurred without change in the status of the probation, and the February hearings terminated probation. If there were any irregularities in those proceedings, the proper remedy would be appeal so that the matter may be resolved on a full record. Therefore, the remedy of prohibition is not available to Scott.

**{¶ 15}** Scott also seeks mandamus to compel the judge to accept and docket all filings, have the transcript prepared at State’s expense, enforce the plea agreement as stated on the record, and reassign the case to a neutral judge. She also seeks mandamus against the clerk of courts to accept, file, and docket all filings tendered by Scott, refrain from returning filings based on fee disputes, transmit the records pursuant to appeal, and to perform all duties imposed by R.C. 1901.31.

**{¶ 16}** The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief; (2) the respondent must have a clear legal duty to perform the requested relief; and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion,

even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118 (1987). Furthermore, mandamus is not a substitute for appeal. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55 (1973); *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141 (1967), paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Wilmore v. Hayes*, 2013-Ohio-4716, ¶ 6 (8th Dist.). Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45 (1997); *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.*, 56 Ohio St.3d 33 (1990). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165 (1977); *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581 (1953); *State ex rel. Connole v. Cleveland Bd. of Edn.*, 87 Ohio App.3d 43 (8th Dist. 1993).

{¶ 17} Moreover, mandamus will not issue to compel the observance of law generally. *State ex rel. Tillimon v. Weiher*, 65 Ohio St.3d 468 (1992). Nor will mandamus issue to remedy the anticipated nonperformance of a duty. *State ex rel. Home Care Pharmacy, Inc. v. Creasy*, 67 Ohio St.2d 342 (1981).

{¶ 18} Although mandamus should be used with caution, the court has discretion in issuing it. In *State ex rel. Pressley v. Industrial Comm. of Ohio*, 11 Ohio St.2d 141 (1967), paragraph seven of the syllabus, the Supreme Court of Ohio ruled that “in considering the allowance or denial of the writ of mandamus on the

merits, [the court] will exercise sound, legal and judicial discretion based upon all the facts and circumstances in the individual case and the justice to be done.” The court elaborated that in exercising that discretion the court should consider

the exigency which calls for the exercise of such discretion, the nature and extent of the wrong or injury which would follow a refusal of the writ, and other facts which have a bearing on the particular case. . . . Among the facts and circumstances which the court will consider are the applicant’s rights, the interests of third persons, the importance or unimportance of the case, the applicant’s conduct, the equity and justice of the relator’s case, public policy and the public’s interest, whether the performance of the act by the respondent would give the relator any effective relief, and whether such act would be impossible, illegal, or useless.

*Id.* at 161-162. *State ex rel. Bennett v. Lime*, 55 Ohio St.2d 62 (1978); *State ex rel. Dollison v. Reddy*, 55 Ohio St.2d 59 (1978); and *State ex rel. Mettler v. Commrs. of Athens Cty.*, 139 Ohio St. 86 (1941).

{¶ 19} This court first notes that mandamus does not lie to compel a judge to reassign a case or to recuse himself or herself. Those are discretionary decisions that mandamus may not control. Moreover, the proper remedy to remove a judge for bias is filing an affidavit of disqualification with the Supreme Court of Ohio, pursuant to R.C. 2701.03, a remedy Scott has already tried. *State ex rel. Siemientkowski v. Gallagher*, 2003-Ohio-3543 (8th Dist.).

{¶ 20} The other claims revolve around the clerk’s declining to accept two filings for lack of the proper filing fee. Given the procedural posture of the underlying case, this court declines to issue a writ of mandamus because Scott has an adequate remedy at law through seeking a delayed appeal pursuant to App.R. 5.

*See State ex rel. McKinney v. Defiance Cty. Court of Common Pleas*, 2009-Ohio-4693. Similarly, mandamus to enforce the plea agreement is precluded by the remedy of a delayed appeal.

**{¶ 21}** This court also declines to issue the writ of mandamus for the other claims to accept, file, and docket filings tendered by Scott, to transmit the record, to perform all duties under R.C. 1901.31, to rule on motions, and to provide a transcript at State's expense. These claims seek to compel the observance of the law generally or anticipate the nonperformance of a duty. Mandamus does not lie for such claims.

**{¶ 22}** Accordingly, the court grants the respondents' motion to dismiss. Relator to pay costs; costs waived. 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).

**{¶ 23}** Writ dismissed.

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MARY J. BOYLE, JUDGE

LISA B. FORBES, P.J., and  
MICHAEL JOHN RYAN, J., CONCUR