

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE EX REL. PETER PAPP,	:	
Relator,	:	No. 116576
v.	:	
HON. JOHN J. SPELLACY,	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: PETITION DISMISSED

DATED: September 21, 2026

Writ of Prohibition
Motion No. 597161
Order No. 599476

Appearances:

Peter Papp, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Craig A. McClelland, Assistant Prosecuting Attorney, *for respondent*.

MICHELLE J. SHEEHAN, A.J.:

{¶ 1} Relator Peter Papp, *pro se*, has filed a petition for a writ of prohibition seeking to prohibit respondent Judge John J. Spellacy “from enforcing” an alleged “void 10/22/2025 [court-supervised release] order” in his underlying criminal case,

State v. Papp, Cuyahoga C.P. No. CR-25-704425-A. Respondent has filed a motion to dismiss Papp’s petition pursuant to Civ.R. 12(B)(6) for failure to state a claim for which relief can be granted.

{¶ 2} Because, for the reasons that follow, it appears beyond doubt that Papp cannot prevail on his prohibition claim, we grant respondent’s motion to dismiss Papp’s petition.

I. Factual and Procedural Background¹

{¶ 3} Papp was originally indicted on January 27, 2025, in Cuyahoga C.P. No. CR-25-698734-A. Papp posted and was released on \$100,000 bond.

{¶ 4} On August 20, 2025, Papp was reindicted in Cuyahoga C.P. No. CR-25-704425-A on 16 counts, including charges of attempted murder, discharge of a firearm on or near prohibited premises, felonious assault, improperly discharging a firearm at or into a habitation or a school safety zone, possessing criminal tools, drug possession, criminal damaging or endangering, tampering with evidence, and falsification. His bond from Cuyahoga C.P. No. CR-25-698734-A was applied to

¹ The discussion of the facts and procedural background in this opinion includes information obtained from review of the publicly available, online dockets in the underlying cases. *See State ex rel. Fischer Asset Mgmt., LLC v. Scott*, 2023-Ohio-3891, ¶ 3, fn. 1 (8th Dist.) (observing, in original action, that “[t]his court is permitted to take judicial notice of court filings that are readily accessible from the internet”); *Patterson v. Cuyahoga Cty. Common Pleas Court*, 2019-Ohio-110, ¶ 2, fn. 1 (8th Dist.) (setting forth procedural history relevant to mandamus action based on review of “publicly available dockets”), citing *Cornelison v. Russo*, 2018-Ohio-3574, ¶ 8, fn. 2 (8th Dist.), citing *State ex rel. Everhart v. McIntosh*, 2007-Ohio-4798, ¶ 8; *see also Manning v. Gallagher*, 2025-Ohio-2781, ¶ 2, fn. 1 (8th Dist.). Judicial notice may be taken of such matters in writ actions without converting a motion to dismiss into a motion for summary judgment. *State ex rel. Annayan v. Gall*, 2026-Ohio-2330, ¶ 2, fn. 1 (8th Dist.).

Cuyahoga C.P. No. CR-25-704425-A. Cuyahoga C.P. No. CR-25-698734-A was thereafter dismissed without prejudice.

{¶ 5} Concerns arose regarding Papp's competency. At his arraignment in the reindicted case, Papp was referred to the court psychiatric clinic for a competency evaluation. A competency hearing was scheduled for October 22, 2025. On October 22, 2025, the parties stipulated to the court psychiatric clinic's report, and the competency hearing was waived. Papp was determined to be incompetent but capable of competency restoration within the statutory time frame. He was ordered to be supervised by a "CSR mental health officer" and was referred to Murtis Taylor for outpatient competency restoration treatment.

{¶ 6} On October 22, 2025, the trial court issued three orders:

- "Court orders defendant to be supervised by: CSR mental health officer CSR supervision"
- "Pursuant to the report dated: 10/7/2025 of Becca Berquist, Ph.D. from the Cuyahoga County Court Psychiatric Clinic, the defendant is hereby referred to Murtis Taylor for competency restoration. Murtis Taylor is to submit an update by 11/19/2025 with the defendant's progress."
- "Pretrial held 10/22/2025. Pretrial previously set for 10/22/2025 at 09:00 am is reset for 11/20/2025 at 09:00 am."

{¶ 7} On November 18, 2025, the trial court entered the following "nunc pro tunc entry as of and for October 22, 2025":

Hearing waived. Parties waive hearing in open court and on the record and stipulate by journal entry to the Court Psychiatric Clinic report. State v. Dowdy, 2012 Ohio 2382 (Ohio Ct. App., Cuyahoga County, May 31, 2012).

On former day, the defendant was referred to the Court Psychiatric Clinic for competency evaluation. In his/her report dated 10/07/2025, Dr. Becca Berquist Ph.D. opined that the defendant is incompetent to stand trial, but that there is substantial probability of restoration to competency within the statutory time frame if provided with course of treatment. The parties stipulate to the admission of the report and the findings into evidence and waive cross-examination of the doctor who prepared the report.

Based upon the evidence, the court makes the following findings:

1. The defendant is incompetent to stand trial;
2. The defendant can be restored to competency within the statutory time frame if provided with a course of treatment; and
3. The least restrictive treatment setting, consistent with the defendant's treatment needs and safety of the community, is out-patient treatment through Murtis Taylor.

Pursuant to Ohio Revised Code section 2945.38(B), the court orders the defendant to out-patient treatment for competency restoration treatment through Murtis Taylor. Court shall contact court coordinator, MHDD court to advise of the referral being made by the court. . . . Murtis Taylor shall provide the court with a written report reflecting said determination (see R.C. 2945.38(F)). The written report shall be delivered by certified U.S. mail to Judge John J Spellacy in courtroom JC23C, Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113.

{¶ 8} In March 2026, the trial court ordered an independent forensic psychiatric competency evaluation. On April 21, 2026, the parties stipulated to the competency report submitted following that evaluation, and the trial court found Papp competent to stand trial.

{¶ 9} On June 5, 2026, Papp filed the instant petition for a writ of prohibition to “prevent[] Respondent from enforcing the void 10/22/2025 CSR order.” Papp alleges that (1) he was “illegal[ly]” placed on “probation/community

control supervision” and subjected to urine testing and oral swab testing in the underlying criminal case “without any sentencing journal entry” and (2) the “10/22/2025 CSR order” was “void ab initio” because it was entered during a “mandatory stay” that was in effect after Papp had been declared incompetent. Papp contends that from October 2025 through June 4, 2026, “Cuyahoga County Probation/CSR forced [him] to submit urine tests once per month, sometimes twice per month without any valid Journal Entry” and that his constitutional rights were violated as a result of these alleged “illegal searches” and “illegal probation/community control supervision.” He also contends that he is entitled to relief because (1) certain of his urine samples were lost; (2) the trial court “refus[ed] to rule” on two pro se motions he had filed — a “motion regarding false testimony,” filed on May 29, 2026, and an “emergency ex parte motion to terminate void supervision and all drug testing including urine and oral swab tests,” filed on June 4, 2026; and (3) his assigned counsel “abandon[ed]” him and provided “ineffective assistance” by failing to take action after Papp notified him of the “illegal testing,” lost urine samples, and alleged constitutional violations.

{¶ 10} In addition to a writ of prohibition “preventing [r]espondent from enforcing the void 10/22/2025 CSR order,” Papp’s petition seeks (1) an order “declaring all supervision and testing” of Papp “from 10/22/25 to the present void ab initio”; (2) an order “acknowledging” Papp’s “preservation of damages claim” under 42 U.S.C. 1983 for “18+ illegal searches + spoliation in [an] amount [of] 5000 a day for unconstitutional damages urine samples [sic] to be pursued in federal

court”; and (3) an order “preserving evidence and sanctioning Probation/CSR for destruction/loss of urine samples.”

{¶ 11} On July 6, 2026, Papp pled guilty to charges of attempted murder with a three-year firearm specification, discharge of firearm on or near prohibited premises, drug possession, tampering with evidence, and falsification. The trial court accepted his guilty pleas, and Papp was remanded awaiting sentencing.

{¶ 12} Respondent thereafter filed a motion to dismiss Papp’s petition pursuant to Civ.R. 12(B)(6), arguing that Papp cannot establish the requirements for a writ of prohibition because (1) Papp was required to submit to DNA testing pursuant to R.C. 2901.07(B)(1); (2) Papp was not on “probation” as alleged in the petition but was on court-supervised release as a condition of bond; (3) Papp could not establish that respondent lacked jurisdiction to impose terms of court-supervised release as a condition of bond; (4) no stay was ever entered in the underlying case; (4) Papp’s contentions of motions not yet ruled upon do not give rise to a writ of prohibition; and (5) “any claims of attorney issues may be raised on appeal, thus providing an adequate legal remedy.”

{¶ 13} Papp has not filed an opposition to respondent’s motion to dismiss.

{¶ 14} On August 18, 2026, the trial court denied Papp’s pro se motion to withdraw his guilty pleas and reinstate bond, and Papp was sentenced to an aggregate prison term of 10 to 13 and one-half years.

II. Law and Analysis

A. Standard of Review – Motion to Dismiss

{¶ 15} A Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of the petition. Dismissal of a petition seeking a writ of prohibition for failure to state a claim upon which relief can be granted is appropriate if, it appears beyond doubt, after presuming the truth of all material factual allegations in the petition and making all reasonable inferences in the relator’s favor, that the relator is not entitled to the requested relief in prohibition. *State ex rel. Bates v. Clancy*, 2026-Ohio-2048, ¶ 16; *State ex rel. Gordon v. Summit Cty. Court of Common Pleas*, 2025-Ohio-2927, ¶ 8; *State ex rel. Nyamusevya v. Hawkins*, 2021-Ohio-1122, ¶ 14. “While we must accept factual assertions as true, ‘unsupported legal conclusions, even when cast as factual assertions, are not presumed true for purposes of a motion to dismiss.’” *State ex rel. Gordon* at ¶ 8, quoting *State ex rel. Martre v. Reed*, 2020-Ohio-4777, ¶ 12; *see also State ex rel. Sands v. Court of Common Pleas Judge*, 2018-Ohio-4245, ¶ 8 (“‘[U]nsupported conclusions of a complaint are not considered admitted and are not sufficient to withstand a motion to dismiss.’”), quoting *State ex rel. Seikbert v. Wilkinson*, 69 Ohio St.3d 489, 490 (1994).

B. Requirements for a Writ of Prohibition

{¶ 16} “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). “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. Thomas v. McGinty*, 2019-Ohio-5129, ¶ 13 (8th Dist.), citing *State ex rel. Ellis v. McCabe*, 138 Ohio St. 417 (1941), paragraph three of the syllabus. A writ of prohibition is an “extraordinary remedy which is customarily granted with caution and restraint, and is issued only in cases of necessity arising from the inadequacy of other remedies.” *State ex rel. Henry v. Britt*, 67 Ohio St.2d 71, 73 (1981); *see also Gowdy v. Reali*, 2024-Ohio-6196, ¶ 2 (8th Dist.) (A writ of prohibition “should be used with great caution and not issue in a doubtful case.”). A writ of prohibition “will not issue to prevent an erroneous judgment, to serve the purpose of appeal, or to correct mistakes of the lower court in deciding questions within its jurisdiction.” *Id.*

{¶ 17} To obtain a writ of prohibition, a relator must usually establish, by clear and convincing evidence, that (1) the respondent exercised or is about to exercise judicial power, (2) the exercise of that power is unauthorized by law, and (3) denial of the writ would result in an injury for which no adequate remedy exists in the ordinary course of the law. *See, e.g., State ex rel. Taylor v. Miday*, 2024-Ohio-6203, ¶ 17 (8th Dist.), citing *State ex rel. Edward Smith Corp. v. Marsh*, 2024-Ohio-201, ¶ 6.

{¶ 18} In most cases, prohibition provides a preventative rather than a corrective remedy, i.e., the relator only seeks to prevent an anticipated judicial action. *State ex rel. Taylor* at ¶ 18. Where, however, a relator seeks a writ of prohibition to correct a past action, the relator must demonstrate that the

respondent “patently and unambiguously lacked jurisdiction” to take the action of which the relator complains. *Id.* Where a court patently and unambiguously lacks jurisdiction to act, “the availability or adequacy of a remedy is immaterial to the issuance of a writ of prohibition,” and the relator need not establish that element. *Id.*; see also *State ex rel. Davie v. Franklin Cty. Court of Common Pleas*, 2023-Ohio-4569, ¶ 13 (“If jurisdiction was patently and unambiguously lacking, a writ of prohibition will issue to correct a judgment issued by a court that lacked jurisdiction.”).

C. Papp’s Petition

{¶ 19} Papp’s petition seeks a writ of prohibition generally “preventing [r]espondent from enforcing the void 10/22/2025 CSR order” and “declaring all supervision/testing from 10/22/2025 to the present void ab initio.” Regardless of whether we construe Papp’s petition as seeking a preventative or a corrective remedy, it does not change the result here. Presuming the factual allegations of Papp’s petition as true and drawing all reasonable inferences in his favor, it appears beyond doubt that Papp can prove no set of facts entitling him to the requested extraordinary relief in prohibition. Accordingly, we grant respondent’s motion to dismiss Papp’s petition.

{¶ 20} There is no dispute that the Cuyahoga County Court of Common Pleas has both subject-matter jurisdiction over Papp’s criminal case and personal jurisdiction over Papp. Respondent is a sitting judge of the Cuyahoga County Common Pleas Court, who has been assigned to handle Papp’s criminal case. A

common pleas court has subject-matter jurisdiction over felony cases. R.C. 2931.03; *State ex rel. Martre v. Reed*, 2025-Ohio-4542, ¶ 14, citing *Smith v. Sheldon*, 2019-Ohio-1677, ¶ 8. The jurisdiction of a court of common pleas is invoked by the return of an indictment. *State ex rel. Papp v. Spellacy*, 2026-Ohio-3121, ¶ 17 (8th Dist.), citing *Click v. Eckle*, 174 Ohio St. 88, 89 (1962). “In a criminal matter, the court acquires jurisdiction over a person by lawfully issued process, followed by the arrest and arraignment of the accused and his plea to the charge.” *State v. Henderson*, 2020-Ohio-4784, ¶ 36; accord *State v. Jeffries*, 2023-Ohio-4657, ¶ 4 (8th Dist.). Papp was named in a criminal indictment in the Cuyahoga County Court of Common Pleas, charging him with felony offenses based on alleged criminal acts occurring within Cuyahoga County. Papp was arrested, arraigned, and entered pleas in the underlying case.

{¶ 21} Nevertheless, Papp contends that the trial court exceeded its jurisdiction by issuing its “10/22/2025 CSR order.”² He contends that the order is “void,” because (1) Papp was “not legally on probation” or community control given that “[t]he docket contains no sentencing [journal entry]” and (imposing probation or community control without a sentencing journal entry is “void as a matter of law”) and (2) the October 22, 2025 order was entered while a “mandatory stay” was in

² In his petition, Papp does not specify which of the three orders entered by the trial court on October 22, 2025 (or the nunc pro tunc order entered on November 18, 2025 “as of and for October 22, 2025”), he is challenging.

effect due to his incompetency, such that any urine testing conducted between October 2025 and June 2026 pursuant to that order was “illegal.”

{¶ 22} Papp’s arguments are meritless. First, a review of the docket shows that Papp was not placed on “probation” or community control but, rather, was on court-supervised release. On October 22, 2025, Papp was ordered “to be supervised by” a “CSR mental health officer CSR supervision” when undergoing outpatient competency restoration treatment through Murtis Taylor.

{¶ 23} Second, Papp contends that a mandatory stay was in effect, pursuant to R.C. 2945.37(G), at the time the trial court issued its October 22, 2025 order. He quotes R.C. 2945.37(G) as stating, “If the court finds the defendant incompetent . . . all proceedings in the case shall be stayed.” However, that is not accurate recitation of R.C. 2945.37(G). Rather, R.C. 2945.37(G) states, in its entirety:

A defendant is presumed to be competent to stand trial. If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant’s present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant’s defense, the court shall find the defendant incompetent to stand trial and shall enter an order authorized by section 2945.38 of the Revised Code.

{¶ 24} R.C. 2945.37(G) did not impose a mandatory stay, and respondent did not order a stay of proceedings in the underlying case that precluded CSR supervision of Papp while he was undergoing competency restoration treatment. Papp’s allegations do not support a finding that the October 22, 2025 order was “void” or that the trial court exceeded its jurisdiction in ordering CSR supervision, to warrant extraordinary relief in prohibition.

{¶ 25} Papp also alleges generally in his petition that he was subject to “illegal” “oral swab testing.” He does not indicate when this occurred. However, the docket shows that at his arraignment on February 10, 2025, in the originally indicted case (Cuyahoga C.P. No. CR-25-698734-A), after the trial court found that Papp was “18 years of age or older, was charged with a felony on or after July 1, 2011, and ha[d] not submitted to a DNA specimen collection,” Papp was ordered to “submit to a DNA specimen collection procedure administered by the sheriff within 24 hours” “in accordance with R.C. 2901.07(B)(1)(b).” R.C. 2901.07(B)(1)(b) states:

If a person who is charged with a felony on or after July 1, 2011, has not been arrested and first appears before a court or magistrate in response to a summons, or if the head of the arresting law enforcement agency has not administered a DNA specimen collection procedure upon the person arrested for a felony in accordance with division (B)(1)(a) of this section by the time of the arraignment or first appearance of the person, the court shall order the person to appear before the sheriff or chief of police of the county or municipal corporation within twenty-four hours to submit to a DNA specimen collection procedure administered by the sheriff or chief of police. The sheriff or chief of police shall cause the DNA specimen to be collected from the person in accordance with division (C) of this section.

Papp cannot show that the trial court exceeded its jurisdiction in ordering such testing.

{¶ 26} With respect to the remaining allegations in Papp’s petition, i.e., lost urine test results, the trial court’s failure to rule on pending motions, and claims of attorney “abandonment” and ineffective assistance of counsel, such allegations do not involve the alleged exercise of unauthorized judicial power, and, therefore, also do not state a claim for relief in prohibition.

{¶ 27} Because Papp’s petition cannot establish the necessary elements for a writ of prohibition, we grant respondent’s motion to dismiss the petition pursuant to Civ.R. 12(B)(6).

{¶ 28} In addition, Papp’s petition is procedurally deficient because the caption of his petition fails to include mailing addresses for the parties as required under Civ.R. 10(A). This provides further grounds for dismissal. *See, e.g., In re Collado*, 2020-Ohio-5337, ¶ 9 (8th Dist.); *Nikooyi v. Cuyahoga Cty. Prosecuting Dept.*, 2020-Ohio-3730, ¶ 6 (8th Dist.).

{¶ 29} Finally, review of the docket of the underlying case shows that Papp is no longer out on bond and thus no longer subject to supervision on court-supervised release. On July 6, 2026, Papp pled guilty to various offenses. The trial court accepted his guilty pleas and remanded him awaiting sentencing. On July 22, 2026, the trial court denied a motion to reinstate bond filed by Papp’s counsel. On August 18, 2026, the trial court denied Papp’s pro se motion to withdraw his guilty pleas and reinstate bond and sentenced him to an aggregate prison term of 10 to 13 and one-half years. Accordingly, to the extent Papp seeks a writ of prohibition “preventing [r]espondent from enforcing the void 10/22/2025 CSR order,” his petition is now moot. *State ex rel. Ames v. Summit Cty. Court of Common Pleas*, 2020-Ohio-354, ¶ 8 (““A case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.””), quoting *State ex rel. Gaylor, Inc. v. Goodenow*, 2010-Ohio-1844, ¶ 10-11, quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969).

{¶ 30} Petition dismissed.

{¶ 31} Costs assessed against relator. The clerk is directed to serve on all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

MICHELLE J. SHEEHAN, ADMINISTRATIVE JUDGE

EMANUELLA D. GROVES, J., and
DEENA R. CALABRESE, J., CONCUR