Appendix A

The Supreme Court of Ohio

State of Ohio ex rel. Lonnie Rarden	Case No. 2022-1390
v.	JUDGMENT ENTRY
Butler County Common Pleas Court, et al.	APPEAL FROM THE COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Butler County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed, consistent with the opinion rendered herein.

It is further ordered that a mandate be sent to and filed with the clerk of the Court of Appeals for Butler County.

(Butler Co[illegible]nty Court of Appeals; No. CA2022-08-074)

Sharon L. Kennedy
Chief Justice

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Rarden v. Butler Cty. Common Pleas Court*, Slip Opinion No. 2023-Ohio-3742.]

SLIP OPINION NO. 2023-OHIO-3742

THE STATE EX REL. RARDEN, APPELLANT, *v.* BUTLER COUNTY COMMON PLEAS COURT ET AL., APPELLEES.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Rarden v. Butler Cty. Common Pleas Court*, Slip Opinion No. 2023-Ohio-3742.]

Mandamus and prohibition—Appellant had adequate remedy in ordinary course of law through direct appeal to raise his claim that trial court violated his right to counsel—Trial court did not patently and unambiguously lack jurisdiction to sentence or resentence appellant—Court of appeals' judgment dismissing complaint affirmed.

(No. 2022-1390—Submitted April 4, 2023—Decided October 17, 2023.)

APPEAL from the Court of Appeals for Butler County, No. CA2022-08-074.

Per Curiam.

{¶ 1} Appellant, Lonnie Rarden, appeals the Twelfth District Court of Appeals' dismissal of his complaint for writs of mandamus and prohibition. Rarden

seeks writs ordering appellees, the Butler County Common Pleas Court and Judge Daniel Haughey[1] (collectively, "the trial court"), to vacate his criminal sentence. At his trial, Rarden waived his right to counsel and proceeded pro se. At Rarden's sentencing and resentencing hearings, the trial court did not again inform Rarden of his right to counsel. Rarden argues that the Sixth Amendment to the United States Constitution requires that a defendant be expressly informed of his right to counsel at each critical stage of the proceeding and that the trial court's failure to do so in his case rendered his sentence void.

{¶ 2} For the reasons explained below, we affirm the court of appeals' judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 3} Rarden avers that in 2007, he was convicted of escape, retaliation, complicity to perjury (two counts), complicity to tampering with evidence, menacing by stalking, and violating a protective order (18 counts) and that he was sentenced to a total of 26.5 years in prison.

{¶ 4} Having waived his right to counsel, Rarden appeared pro se at the trial. He also appeared pro se at the sentencing hearing. Rarden avers that the trial court did not notify him at the sentencing hearing of any right to counsel he may have had at that stage in the proceeding and that he did not waive any such right.

{¶ 5} In 2010, Rarden filed a motion for resentencing, asserting that the trial court had improperly imposed postrelease control. The trial court granted the motion and resentenced Rarden at a new hearing. Rarden contends that at the resentencing hearing, at which he appeared pro se, the trial court reduced the period of postrelease control from five years to three years. The term of imprisonment

1. In his complaint for writs of mandamus and prohibition, Rarden named Judge Michael Sage as a respondent. In 2019, Rarden's criminal cases were reassigned from Judge Sage to Judge Charles Pater. Judge Pater has since retired and been replaced by Judge Haughey, and the court of appeals' decision in this case names Judge Haughey as a respondent.

was unchanged. Rarden avers that the trial court did not notify him at the resentencing hearing of any right to counsel he may have had at that hearing and that he did not waive any such right.

{¶ 6} In August 2022, Rarden filed the current action in the Twelfth District seeking writs of prohibition and mandamus ordering the trial court to vacate his sentencing entries and grant him "any and all other relief [to] which [he] is entitled."

{¶ 7} The trial court filed a motion to dismiss under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted. The Twelfth District granted the motion, stating, "[Rarden] has not provided this court with any authority, and we have found none, that would require a trial court to re-advise a criminal defendant who elected to proceed pro se at trial about his right to counsel prior to sentencing."

{¶ 8} Rarden appealed to this court as of right. He argues that a criminal defendant who waived his right to counsel at trial must be reinformed of his right to counsel at any sentencing or resentencing hearing and that if a court fails to so inform the defendant, the defendant's sentence is void.

II. LEGAL ANALYSIS

A. Standard of Review and Prohibition and Mandamus Requirements

{¶ 9} This court reviews de novo a decision granting a motion to dismiss under Civ.R. 12(B)(6). *Alford v. Collins-McGregor Operating Co.*, 152 Ohio St.3d 303, 2018-Ohio-8, 95 N.E.3d 382, ¶ 10. In doing so, we construe all allegations in the complaint as true. *Id.* And we will not affirm the dismissal unless it appears beyond doubt that the relator can prove no set of facts that would entitle him to relief. *Id.*

{¶ 10} To be entitled to a writ of prohibition, a relator usually must establish (1) that the respondent exercised judicial power, (2) that the respondent lacked the authority to exercise that power, and (3) that the relator lacks an adequate remedy in the ordinary course of the law. *State ex rel. Elder v. Camplese*, 144 Ohio St.3d

89, 2015-Ohio-3628, 40 N.E.3d 1138, ¶ 13. Because Rarden seeks a writ of prohibition to undo the trial court's previous actions, however, he must show that the trial court patently and unambiguously lacked jurisdiction to sentence or resentence him. *See State ex rel. Andrews v. Lake Cty. Court of Common Pleas*, 170 Ohio St.3d 354, 2022-Ohio-4189, 212 N.E.3d 914, ¶ 20. If he makes this showing, this court need not determine whether he has an adequate remedy in the ordinary course of the law. *See id.*

{¶ 11} To be entitled to a writ of mandamus, a relator usually must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6. However, a relator need not show the absence of an adequate remedy in the ordinary course of the law if the respondent patently and unambiguously lacked jurisdiction. *State ex rel. Davis v. Janas*, 160 Ohio St.3d 187, 2020-Ohio-1462, 155 N.E.3d 822, ¶ 10. In such situations, mandamus relief is warranted to " 'prevent any further unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions, notwithstanding the availability of appeal.' " *Id.*, quoting *State ex rel. Dannaher v. Crawford*, 78 Ohio St.3d 391, 393, 678 N.E.2d 549 (1997). Here, Rarden had an adequate remedy in the ordinary course of the law through direct appeal of his sentence. *See Rance v. Watson*, 168 Ohio St.3d 246, 2022-Ohio-1822, 198 N.E.3d 65, ¶ 15. He must therefore show that the trial court patently and unambiguously lacked jurisdiction to sentence or resentence him.

B. The Trial Court Did Not Lack Jurisdiction to Sentence or Resentence Rarden

{¶ 12} The trial court had jurisdiction over Rarden's criminal case. *See* R.C. 2931.03; *see also Smith v. Sheldon*, 157 Ohio St.3d 1, 2019-Ohio-1677, 131 N.E.3d 1, ¶ 8. Rarden argues, however, that the trial court violated his Sixth

Amendment right to counsel and that this violation deprived the trial court of jurisdiction.

{¶ 13} Rarden relies on a recent case in which we held that a violation of a defendant's Sixth Amendment right to counsel may deprive a court of jurisdiction, *State ex rel. Ogle v. Hocking Cty. Common Pleas Court*, 167 Ohio St.3d 181, 2021-Ohio-4453, 190 N.E.3d 594, ¶ 12-13, 19 ("*Ogle I*"). In *Ogle I*, we held that a court may lose jurisdiction if the defendant is deprived of the right to counsel during the course of the trial-court proceedings, even if the defendant had counsel earlier in the proceedings. *Id.* at ¶ 2, 12-13.

{¶ 14} Even if Rarden has stated a viable claim that the trial court violated his Sixth Amendment right to counsel, we recently overruled *Ogle I* in *State ex rel. Ogle v. Hocking Cty. Common Pleas Court*, __ Ohio St.3d __, 2023-Ohio-3534, __ N.E.3d __, ¶ 22 ("*Ogle II*"). In *Ogle II*, we held that a "violation of the defendant's right to counsel does not deprive the sentencing court of subject-matter jurisdiction any more than any other constitutional or trial error does." *Id.* at ¶ 21. Such a violation is a structural error that is reversible on appeal, but it does not result in a sentence that is void for the court's lack of subject-matter jurisdiction. *Id.*

{¶ 15} Similarly, even if the trial court had violated Rarden's Sixth Amendment right to counsel, such a violation would not have deprived the trial court of subject-matter jurisdiction over his case or resulted in a void sentence. And because his sentence is not void, his claims raised in this mandamus and prohibition action are barred by the doctrine of res judicata. That doctrine " 'bars the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal.' " *Ogle II* at ¶ 22, quoting *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 59; *see also Bozsik v. Hudson*, 110 Ohio St.3d 245, 2006-Ohio-4356, 852 N.E.2d 1200, ¶ 9 (redress for a violation of the right to counsel may be sought on appeal).

III. CONCLUSION

{¶ 16} Because Rarden had an adequate remedy in the ordinary course of the law through direct appeal to raise his claim that the trial court violated his right to counsel and because he cannot show that the trial court patently and unambiguously lacked jurisdiction to sentence or resentence him, he is not entitled to a writ of mandamus or prohibition. We therefore affirm the Twelfth District Court of Appeals' judgment dismissing his complaint.

Judgment affirmed.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, BRUNNER, and DETERS, JJ., concur.

STEWART, J., concurs in judgment only.

Lonnie Rarden, pro se.

Michael T. Gmoser, Butler County Prosecuting Attorney, and Michael Greer, Assistant Prosecuting Attorney, for appellees.

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

October 17, 2023

[Cite as *10/17/2023 Case Announcements*, 2023-Ohio-3772.]

MERIT DECISIONS WITH OPINIONS

2022-1390. State ex rel. Rarden v. Butler Cty. Common Pleas Court, Slip Opinion No. 2023-Ohio-3742.
Butler App. No. CA2022-08-074. Judgment affirmed.

Kennedy, C.J., and Fischer, DeWine, Donnelly, Brunner, and Deters, JJ., concur.

Stewart, J., concurs in judgment only.

MOTION AND PROCEDURAL RULINGS

2023-1029. Epling v. State.
Miscellaneous case. Sua sponte, relators ordered to show cause within 14 days why this cause should not be dismissed for failure to perfect service as to respondents State Medical Board, Country Lane Gardens, and Mount Carmel Hospital within the time period since the complaint was filed.

MISCELLANEOUS DISMISSALS

2023-0896. State v. Johnson.
Montgomery App. No. 29659, 2023-Ohio-1686. Appellant has not filed a memorandum in support of jurisdiction, due October 12, 2023, in compliance with the Rules of Practice of the Supreme Court of Ohio and therefore has failed to prosecute this cause with the requisite diligence. Cause dismissed.

MEDIATION MATTERS

The court refers the following cases to mediation under S.Ct.Prac.R. 19.01 and stays all filing deadlines for each case until further order of this court. The court will not issue any decision on the merits in these cases until mediation has concluded.

2023-1288. Jones Apparel Group/Nine West Holdings v. McClain.
Board of Tax Appeals, Nos. 2020-53 and 2020-54.

2023-1296. VVF Intervest, L.L.C. v. Harris.
Board of Tax Appeals, No. 2019-1233.

Appendix B

Pro se

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO ex rel. LONNIE RARDEN,

Relator,

vs.

BUTLER COUNTY COMMON PLEAS COURT, et al.,

Respondents.

CASE NO. CA2022-08-074
REGULAR CALENDAR

ENTRY DENYING COMPLAINT FOR WRIT OF MANDAMUS AND/OR PROHIBITION

The above cause is before the court pursuant to a verified complaint for a writ of mandamus and/or prohibition filed by relator, Lonnie Rarden, on August 4, 2022; a motion to dismiss filed by counsel for respondents, Butler County Court of Common Pleas and Judge Daniel E. Haughey, on August 12, 2022; and a reply memorandum filed by relator on August 22, 2022.

Following a jury trial, relator was convicted of felony escape (Butler County Common Pleas Court Case No. CR2006-07-1271), felony retaliation, two counts of felony complicity to perjury, felony complicity to tampering with evidence, felony menacing by stalking, and seventeen misdemeanor counts of violating a protection order (Butler County Common Pleas Court Case No. CR2006-09-1593). On March 22, 2007, relator was sentenced to a combined total of 26-1/2 years in prison. His convictions and sentences were affirmed by this court on appeal. *State v. Rarden*, 12th Dist. Butler No. CA2007-03-077 (April 21, 2008).

Following his convictions and sentences, relator filed numerous postconviction motions and appeals. On March 26, 2010, relator filed a motion for resentencing asserting that the trial court had improperly imposed postrelease control. The motion was granted by the trial court and relator was resentenced on April 14, 2010. Relator unsuccessfully appealed his resentencing to this court. *State v. Rarden*, 12th Dist. Butler Nos. CA2010-04-095, CA2010-05-106, and CA2010-05-126 (February 7, 2011).

On August 4, 2022, more than 15 years after his original sentence was imposed and more than 11 years after resentencing, appellant has filed the subject complaint for writ of mandamus and/or prohibition. Relying on a recent Ohio Supreme Court case, *State ex. rel. Ogle v. Hocking County Common Pleas Court,* 167 Ohio St.3d 181, 2021-Ohio-4453, appellant contends that the sentencing entries filed on March 22, 2007 and April 14, 2010 are void because the trial court did not provide him with legal counsel at sentencing.

The record establishes, and relator does not dispute, that, following an extensive colloquy between relator and the trial judge held prior to trial, relator requested and received permission from the trial court to represent himself pro se during the proceedings. The trial judge provided relator with "standby" counsel at trial.

To be entitled to a writ of prohibition, relator must establish the exercise of judicial power, lack of authority to exercise that power, and lack of an adequate remedy in the ordinary course of law. *State ex. rel. Elder v. Camplese,* 144 Ohio St.3d 89, 2015-Ohio-3628. However, if the absence of jurisdiction is patent and unambiguous, relator need not establish the third prong, i.e. lack of an adequate remedy in the

ordinary course of law. *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637.

To be entitled to a writ of mandamus, relator must establish by clear and convincing evidence a clear legal right to the requested relief, a clear legal duty on the part of the respondent to provide it, and lack of an adequate remedy in the ordinary course of law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69.

For dismissal of the complaint pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, it must appear from the face of the complaint that relator can prove no set of facts warranting relief after all factual allegations are presumed true and all reasonable inferences are made in relator's favor. *State ex. rel. National Electrical Contractors Association v. Ohio Bureau of Employment Services*, 83 Ohio St.3d 179 (1998).

Addressing the petition for writ of prohibition, there is no dispute that the trial judge exercised judicial authority. Further, the trial judge had authority to exercise jurisdiction over relator because the common pleas court has original jurisdiction over most criminal matters, including the charges that were brought against relator. Although there is authority which suggests that a court's jurisdiction at the beginning of trial may be lost in the course of proceedings if the court fails to provide counsel for an accused who is unable to obtain counsel and who has not intelligently waived this constitutional right, such is not the case here. Relator was initially provided with counsel by the trial court. Following a hearing relator contrary to the advice of the trial judge insisted upon representing himself pro se. Relator has not provided this court with any authority, and we have found none, that would require a trial court to re-advise

a criminal defendant who elected to proceed pro se at trial about his right to counsel prior to sentencing.

With regard to relator's postconviction motion for resentencing filed three years after the original sentence was imposed, the record reveals that the motion for resentencing was filed by relator pro se and he never requested appointment of counsel at the hearing where the trial court corrected imposition of postrelease control.

Relator's petition for writ of mandamus seeks an order from this court vacating the "unauthorized, unlawful and void" sentencing entries filed on March 22, 2007 and April 14, 2010. Relator has failed to establish that he has a clear legal right to this relief, or that the respondents have a clear legal duty to provide it. Further, if relator believes his sentences to be unauthorized, unlawful or void, he has or had an adequate remedy at law by way of direct appeal or postconviction relief.

Relator's contention that he is entitled to relief in prohibition or mandamus based upon the Supreme Court of Ohio's recent decision in *State ex. rel. Ogle v. Hocking Cty. Common Pleas Court* case is without merit, as the Ogle case is easily distinguished. In *Ogle*, the relator was represented by counsel at trial where she was found guilty of assaulting a peace officer. Her attorneys then withdrew from the case prior to sentencing. At the sentencing hearing, Ogle appeared without counsel. She refused to sign a waiver of counsel form, insisting that she did not waive her right to counsel but had "an inability to obtain counsel." Because Ogle insisted upon not waiving her right to counsel, but refused to proceed, stating that she had "an inability to obtain counsel," the trial judge elected to proceed with sentencing. The Ohio

Supreme Court concluded that Ogle had stated a colorable claim that the judge violated her 6th Amendment rights when he ordered her to proceed without counsel.

In the present case, relator unequivocally waived his right to counsel at trial and elected to proceed pro se. At the sentencing hearing, which was held the same day the jury trial was completed, appellant did not request appointment of counsel and continued to represent himself pro se. Unlike the *Ogle* case, there was no reason for the trial judge to believe that relator wanted to be represented by counsel at sentencing. At the resentencing hearing, relator represented himself throughout the proceedings and was not denied representation by counsel.

Based upon the foregoing, the court concludes that relator can prove no set of facts in support of his claim which would entitle him to relief. The motion to dismiss pursuant to Civ.R. 12(B)(6) is therefore with merit and the same is hereby GRANTED. The petitions for mandamus and prohibition are DENIED, costs to relator.

IT IS SO ORDERED.

Additional material from this filing is available in the Clerk's Office.