SLIP OPINION NO. 2023-OHIO-3534

THE STATE EX REL. OGLE, APPELLANT, *v.* HOCKING 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. Ogle v. Hocking Cty. Common Pleas Court,* Slip Opinion No. 2023-Ohio-3534.]

Mandamus—Prohibition—Court of appeals correctly determined doctrine of res judicata barred petitioner's claims that trial court deprived her of right to counsel and lacked jurisdiction to sentence her—Court of appeals' judgment affirmed.

(No. 2022-1052—Submitted February 28, 2023—Decided October 3, 2023.)

APPEAL from the Court of Appeals for Hocking County, No. 20CA9.

APPENDIX A

KENNEDY, C.J.

{¶ 1} In this appeal from a judgment of the Fourth District Court of Appeals, appellant, Melanie A. Ogle, challenges the court of appeals' grant of summary judgment in favor of appellees, the Hocking County Common Pleas Court and Judge Dale Crawford (collectively, "the trial court"), in her action for writs of mandamus and prohibition. The Fourth District correctly determined that the doctrine of res judicata bars Ogle's claims that the trial court deprived her of her right to counsel and lacked jurisdiction to sentence her. We therefore affirm the Fourth District's judgment.

Facts and Procedural History

{¶ 2} In August 2011, a jury found Ogle guilty of assaulting a peace officer, a felony violation of R.C. 2903.13. The trial court granted Ogle a recognizance bond until her sentencing, but on September 9, the state moved to revoke the bond. The state's motion cited an incident report issued by the Logan Police Department, which, according to the state's motion, indicated that Ogle had "had direct, confrontational contact with a juror in this case." When Ogle failed to appear for a hearing on the motion, the trial court revoked her bond and issued a bench warrant.

{¶ 3} On September 16, the trial court placed Ogle on house arrest with electronic monitoring. The court's order stated that Ogle "shall be released on a Recognizance Bond with the conditio[n that] the Defendant is to have no contact, direct or indirect, with any juror, witness, *lawyer* or the Court while on bond." (Emphasis added.)

{¶ 4} Ogle was represented by counsel at trial and at the September 16 revocation hearing. On September 21, however, she filed a "notice of pro se appearance" in which she waived her right to counsel due to her inability to pay.

{¶ 5} On September 27, the trial court held Ogle's sentencing hearing. At the hearing, Ogle refused to sign a waiver-of-counsel form, insisting that she was not waiving her right to counsel but that she had "an inability to obtain counsel."

The trial court asked Ogle three times whether she wanted the court to appoint counsel to represent her. Ogle did not directly answer the court's questions but responded that she was not waiving her right to counsel. The trial court told Ogle that it would "take [her] notice of pro se appearance as a voluntary waiver of [her] right to counsel at th[at] point in time because [she had] not requested the Court [to] appoint Counsel on [her] behalf." Ogle continued to assert at the hearing that she was not waiving her right to counsel, prompting the court to say the following:

> Well, as I said, I could have ten different hearings, Mrs. Ogle, with you, and you could say the same thing, I haven't waived my right to counsel and then I don't know what I am supposed to do. I can't force counsel upon you. I have asked you if you want the Court to appoint counsel since you can't afford one. You won't answer yes under that question so I am going to proceed with sentencing.

{¶ 6} The trial court then conducted the sentencing hearing and imposed a three-year period of community control, a six-month jail term, a $2,500 fine, and $792.65 in restitution and ordered Ogle to pay court costs. When the court asked whether she had anything else to say before the hearing ended, Ogle stated, "I do not waive my right to counsel. I have an inability to obtain counsel." Ogle added that she believed that the hearing violated her rights under the Sixth and Fourteenth Amendments to the United States Constitution.

{¶ 7} On September 28, the trial court journalized its sentencing entry, which stayed the start of Ogle's jail term until October 27. The record does not show what, if anything, occurred on October 27. On November 22, the trial court summoned Ogle back to court, apparently out of concern that "there may [have been] some type of misunderstanding." At that hearing, the court stated, "[A]t no

time have I ever ordered you not to have any contact with a lawyer." When Ogle asserted that the court's September 16 bond order forbade her from speaking to any attorney, the court responded, "The bond order doesn't say that." The court then told Ogle that if she wanted an attorney to represent her, it "would be happy to appoint [one] for purposes of her appeal" as well as her bond argument, provided she filled out an affidavit of indigency. The hearing concluded with no resolution of the legal-representation question.

{¶ 8} On November 22, the trial court revoked Ogle's bond after it was notified that Ogle would no longer pay for electronic monitoring.

{¶ 9} The Fourth District affirmed Ogle's conviction on direct appeal. *See State v. Ogle*, 4th Dist. Hocking Nos. 11CA29, 11CA32, 12CA2, 12CA11, 12CA12, and 12CA19, 2013-Ohio-3420, ¶ 48 ("*Ogle I*").

{¶ 10} Approximately seven years later, in September 2020, Ogle filed a complaint for writs of mandamus and prohibition in the Fourth District. She alleged that the trial court had no jurisdiction to hold the September 27, 2011 sentencing hearing because she had not waived her right to counsel. She asked the court of appeals to void the September 28, 2011 sentence.

{¶ 11} On the trial court's motion, the Fourth District dismissed the complaint. The court of appeals held that a writ of prohibition would not lie, because the trial court had general jurisdiction over Ogle's felony case. And it held that Ogle was not entitled to mandamus relief, because she had an adequate remedy by way of direct appeal to assert her right-to-counsel claim.

{¶ 12} Ogle appealed as of right to this court, which reversed and remanded. *State ex rel. Ogle v. Hocking Cty. Common Pleas Court*, 167 Ohio St.3d 181, 2021-Ohio-4453, 190 N.E.3d 594, ¶ 19, 24 ("*Ogle II*"). In reaching its conclusion, a majority of this court relied on *Johnson v. Zerbst*, 304 U.S. 458, 468, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), in which the United States Supreme Court held that when the accused "is not represented by counsel and has not competently and intelligently

waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence." *See Ogle II* at ¶ 12-14. The majority held that Ogle had stated a colorable claim that her underlying conviction was void. *Id.* at ¶ 19.

{¶ 13} On remand, the Fourth District granted summary judgment in favor of the trial court. According to the court of appeals, Ogle "already presented her arguments regarding (1) the trial court's lack of jurisdiction to sentence her and (2) the violation of her Sixth and Fourteenth Amendment rights" in 2011, in her direct appeal from her conviction in *Ogle I*, 2013-Ohio-3420. Having already unsuccessfully presented these claims, the Fourth District reasoned, Ogle's second effort to raise the same issues was barred by res judicata.

{¶ 14} Ogle has appealed to this court as of right.

Law and Analysis

{¶ 15} "The doctrine of res judicata bars someone from raising a claim that could have been raised and litigated in a prior proceeding." *State v. Blanton*, 171 Ohio St.3d 19, 2022-Ohio-3985, 215 N.E.3d 467, ¶ 2. However, res judicata does not preclude review of a sentence that is void for lack of subject-matter jurisdiction. *See Lingo v. State*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.3d 1188, ¶ 46; *State v. Wilson*, 73 Ohio St.3d 40, 45, 652 N.E.2d 196 (1995), fn. 6. Conversely, "[w]here a judgment of conviction is rendered by a court having jurisdiction over the person of the defendant and jurisdiction of the subject matter, such judgment is not void, and the cause of action merged therein becomes res judicata as between the state and the defendant." *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph six of the syllabus.

{¶ 16} "Subject-matter jurisdiction refers to the constitutional or statutory power of a court to adjudicate a particular class or type of case." *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 23, citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 11-12, 34. " 'A court's

subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case.' " *Id.*, quoting *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 19. "Rather, the focus is on whether the forum itself is competent to hear the controversy." *Id.*, citing 18A Wright, Miller & Cooper, *Federal Practice and Procedure*, Section 4428, at 6 (3d Ed.2017) ("Jurisdictional analysis should be confined to the rules that actually allocate judicial authority among different courts").

{¶ 17} "[P]ursuant to R.C. 2931.03, 'a common pleas court has subject-matter jurisdiction over felony cases.' " *Id.* at ¶ 25, quoting *Smith v. Sheldon*, 157 Ohio St.3d 1, 2019-Ohio-1677, 131 N.E.3d 1, ¶ 8. The Hocking County Court of Common Pleas, then, was the proper forum to sentence Ogle for her felony offense. Consideration of the question whether the trial court denied her right to counsel concerns the rights of the parties, not the adjudicatory power of the court. The trial court had subject-matter jurisdiction over the case, and "when a specific action is within a court's subject-matter jurisdiction, any error in the exercise of that jurisdiction renders the court's judgment voidable, not void," *id.* at ¶ 26.

{¶ 18} In *Ogle II*, 167 Ohio St.3d 181, 2021-Ohio-4453, 190 N.E.3d 594, at ¶ 19, a majority of this court disregarded these settled principles and concluded that "Ogle has stated a colorable claim that Judge Crawford violated her Sixth Amendment rights when he ordered her to not communicate with any lawyer and then sentenced her and that this error rendered the sentencing entry void." The majority relied on *Zerbst*, 304 U.S. at 468, 58 S.Ct. 1019, 82 L.Ed. 1461, for the proposition that a court's denial of a defendant's right to counsel in violation of the Sixth Amendment to the United States Constitution deprives the court of jurisdiction and renders any resulting judgment of conviction void. *Ogle II* at ¶ 12-14. However, the United States Supreme Court no longer treats a violation of the right to counsel—either entirely or during a critical phase of the proceeding—as an error divesting the trial court of jurisdiction.

{¶ 19} In the 19th and early 20th centuries, the Supreme Court construed the law so that a court could not issue a writ of habeas corpus unless the trial court had lacked jurisdiction. *See United States v. Cotton*, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002). "The Court's desire to correct obvious constitutional violations led to a 'somewhat expansive notion of "jurisdiction." ' " *Id.*, quoting *Custis v. United States*, 511 U.S. 485, 494, 114 S.Ct. 1732, 128 L.Ed.2d 517 (1994). The Supreme Court therefore relaxed the rule that a writ of habeas corpus was unavailable "by the device of holding that various illegalities deprived the trial court of jurisdiction." *Withrow v. Williams*, 507 U.S. 680, 719, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993) (Scalia, J., concurring in part and dissenting in part). For example, the Supreme Court held that trial courts lacked jurisdiction to violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, *see Ex parte Lange*, 85 U.S. 163, 176, 21 L.Ed. 872 (1873), to try the accused for the violation of an unconstitutional law, *see Ex parte Siebold*, 100 U.S. 371, 376-377, 25 L.Ed. 717 (1879), and relevant here, to deny the accused the assistance of counsel in violation of the Sixth Amendment, *Zerbst* at 468.

{¶ 20} The Supreme Court departed from these earlier cases in *Waley v. Johnston*, 316 U.S. 101, 104-105, 62 S.Ct. 964, 86 L.Ed. 1302 (1942), holding that "the use of the writ in the federal courts to test the constitutional validity of a conviction for crime is not restricted to those cases where the judgment of conviction is void for want of jurisdiction of the trial court to render it." In *Waley*, the Supreme Court "openly discarded the concept of jurisdiction" that was articulated in cases such as *Zerbst* as a concept that had become "more a fiction than anything else," *Wainwright v. Sykes*, 433 U.S. 72, 79, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977). As the Supreme Court explained in *Cotton*, its prior "elastic concept of jurisdiction is not what the term 'jurisdiction' means today, i.e., 'the courts' statutory or constitutional *power* to adjudicate the case.' " (Emphasis added in *Steel Co.*) *Cotton* at 630, quoting *Steel Co. v. Citizens for a Better Environment*,

523 U.S. 83, 89, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998). Rather, subject-matter jurisdiction refers only to "the classes of cases * * * falling within a court's adjudicatory authority," *Kontrick v. Ryan*, 540 U.S. 443, 455, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004), and it is not dependent on the rights or obligations of the parties, *Landgraf v. USI Film Prods.*, 511 U.S. 244, 274, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994). That includes the right to counsel.

{¶ 21} 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. Although a sentence imposed in violation of the Sixth Amendment right to counsel is a structural error that is reversible on appeal, *see United States v. Cronic*, 466 U.S. 648, 658-659, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), fn. 25, such a sentence is not void ab initio for lack of subject-matter jurisdiction, *see Bozsik v. Hudson*, 110 Ohio St.3d 245, 2006-Ohio-4356, 852 N.E.2d 1200, ¶ 9 (explaining that an invalid waiver of counsel does not deprive the trial court of jurisdiction).

{¶ 22} Because this court's decision in *Ogle II*, 167 Ohio St.3d 181, 2021-Ohio-4453, 190 N.E.3d 594, is inconsistent with these principles, we overrule it today. The trial court had subject-matter jurisdiction to sentence Ogle for assaulting a peace officer, and Ogle's sentence for that offense therefore is not void ab initio. And because Ogle's sentence is not void, the claims raised in this mandamus and prohibition action are subject to the doctrine of res judicata, which "bars the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal," *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 59.

{¶ 23} Ogle's direct appeal of her conviction for assaulting a peace officer was one part of six separate appeals in two criminal cases that the Fourth District consolidated for decision. *See Ogle I*, 2013-Ohio-3420, at ¶ 1. Ogle's notice of appeal from the judgment of conviction itself was assigned case No. 11CA29, and

she was represented by counsel in that appeal. *See Ogle I* at ¶ 50, 58. Although Ogle could have raised her claims that the trial court violated her right to counsel and lacked jurisdiction to sentence her in her appeal of the judgment of conviction in case No. 11CA29, she did not. *See Bozsik* at ¶ 9, quoting *Tucker v. Collins*, 64 Ohio St.3d 77, 78, 591 N.E.2d 1241 (1992) (" 'redress for a deprivation of the right [to counsel] should be sought via appeal or postconviction relief under R.C. 2953.21' " [emphasis deleted]); *State ex rel. Green v. Wetzel*, 158 Ohio St.3d 104, 2019-Ohio-4228, 140 N.E.3d 586, ¶ 10 ("Green had an adequate remedy at law because he could have challenged the sentence on direct appeal"). Because Ogle failed to assert her right-to-counsel claim or to challenge her sentence in case No. 11CA29, the court of appeals affirmed the judgment of conviction without addressing those issues, *see Ogle I.*

{¶ 24} It was in case No. 11CA32, a separate, pro se appeal from the order revoking her recognizance bond, that Ogle asserted assignments of error claiming that the trial court had violated her right to counsel and lacked jurisdiction to sentence her. *Ogle I* at ¶ 49-53. However, an appeal from a bond-revocation order was not the vehicle by which to raise those issues. That appeal was limited to review of the trial court's order revoking Ogle's recognizance bond. Moreover, the trial court journalized Ogle's sentence on September 28, 2011, and it issued the bond-revocation order on November 22, 2011, almost two months later. The notice of appeal in case No. 11CA32 therefore was not filed within 30 days of the trial court's journalization of the assault-on-a-peace-officer sentence. For this reason, the court of appeals lacked jurisdiction to review Ogle's sentence as part of the appeal in case No. 11CA32. *See* App.R. 4(A)(1) (providing a 30-day period for perfecting an appeal); *Clermont Cty. Transp. Improvement Dist. v. Gator Milford, L.L.C.*, 141 Ohio St.3d 542, 2015-Ohio-241, 26 N.E.3d 806, ¶ 7 ("Jurisdiction in the court of appeals is based upon a timely filing of a notice of appeal").

{¶ 25} In sum, Ogle's claims that she was deprived of her right to counsel and that her sentence should be vacated could have been presented in her direct appeal of the judgment of conviction. They were not, and they are now barred by res judicata.

Conclusion

{¶ 26} We have recognized that " '[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest[;] and that matters once tried shall be considered forever settled as between the parties.' " *State v. Szefcyk*, 77 Ohio St.3d 93, 95, 671 N.E.2d 233 (1996), quoting *Baldwin v. Iowa State Traveling Men's Assn.*, 283 U.S. 522, 525, 51 S.Ct. 517, 75 L.Ed. 1244 (1931). This public policy is reflected in the doctrine of res judicata, which "promotes the principles of finality and judicial economy by preventing endless relitigation of an issue on which a defendant has already received a full and fair opportunity to be heard." *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, ¶ 18.

{¶ 27} Ogle had a full and fair opportunity to assert her right-to-counsel claims in her direct appeal of the judgment of conviction for her assault-on-a-peace-officer offense—an appeal that was decided more than a decade ago. Her challenge to her sentence now comes too late. The Fourth District correctly determined that res judicata bars this mandamus and prohibition action. Consequently, we affirm the judgment of the court of appeals.

Judgment affirmed.

FISCHER, DEWINE, DONNELLY, BRUNNER, and DETERS, JJ., concur.

STEWART, J., dissents, with an opinion.

STEWART, J., dissenting.

{¶ 28} This court correctly concluded less than two years ago in this same case that a violation of a defendant's right to counsel under the Sixth Amendment

to the United States Constitution renders the defendant's associated conviction void, not voidable. *See* 167 Ohio St.3d 181, 2021-Ohio-4453, 190 N.E.3d 594, ¶ 12-14 ("*Ogle II*"). There is no basis for the court to revisit that decision today—there has been no change in the applicable caselaw, and *Ogle II* and its analysis of the United States Supreme Court's decision in *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), is the law of the case. Accordingly, since appellant Melanie A. Ogle's conviction is void, not voidable, she is permitted to attack it collaterally and res judicata does not bar her claims here, because they have not been decided on the merits. Because the majority holds otherwise, I dissent.

The law-of-the-case doctrine dictates that Zerbst *applies*

{¶ 29} The majority affirms the judgment of the Fourth District Court of Appeals, holding that any errors regarding Ogle's right to counsel at sentencing rendered her sentence voidable, not void, and concluding that this court's prior reliance on *Zerbst* in *Ogle II* was misguided. The majority is incorrect for two reasons.

{¶ 30} First, *Ogle II*'s holding regarding the import of *Zerbst* is the law of the case. *See Ogle II* at ¶ 13-14. "[T]he law-of-the-case doctrine states that ' "the decision of a reviewing court in a case remains the law of that case on all legal questions involved for all subsequent proceedings in the case *at both the trial and reviewing levels*." ' " (Emphasis added in *Breaux*.) *State ex rel. Cherry v. Breaux*, 169 Ohio St.3d 376, 2022-Ohio-1885, 205 N.E.3d 450, ¶ 9, quoting *Hopkins v. Dyer*, 104 Ohio St.3d 461, 2004-Ohio-6769, 820 N.E.2d 329, ¶ 15, quoting *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). This court correctly decided in *Ogle II* that "the declaration in *Zerbst* that a Sixth Amendment violation renders an associated conviction void remains in force." *Id.* at ¶ 13. There has been no United States Supreme Court precedent overruling *Zerbst* or indicating that this court's analysis in *Ogle II* was incorrect. All of the cases the majority cites in support of its position here were decided long before our decision in *Ogle II*, and

the author of the majority opinion here took the same position in *Ogle II*, *see id.* at ¶ 31-39 (Kennedy, J., dissenting).

{¶ 31} Second, under *Ogle II*, 167 Ohio St.3d 181, 2021-Ohio-4453, 190 N.E.3d 594, Ogle's sentence is void only if it is proved that she was denied her right to counsel. But the Fourth District decided the case on remand by applying res judicata and did not reach the right-to-counsel issue; therefore, this court's analysis should be confined to the sole issue on appeal—whether Ogle's mandamus and prohibition claims are barred by res judicata.

Standard of review

{¶ 32} The application of res judicata to a particular issue is a question of law, so the review of a judgment applying res judicata is de novo. *Lycan v. Cleveland*, __ Ohio St.3d __, 2022-Ohio-4676, __ N.E.3d __, ¶ 21 (lead opinion).

Res judicata does not apply, since Ogle's right-to-counsel claim was not decided on the merits

{¶ 33} The doctrine of res judicata provides that "[a] final judgment rendered on the merits by a court of competent jurisdiction is a complete bar to any subsequent action on the same claim between the same parties or those in privity with them." *State ex rel. Jackson v. Ambrose*, 151 Ohio St.3d 536, 2017-Ohio-8784, 90 N.E.3d 922, ¶ 13. Res judicata consists of both collateral estoppel (issue preclusion) and estoppel by judgment (claim preclusion). *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 653 N.E.2d 226 (1995). Issue preclusion applies only to the precise question decided in the previous action. *See Robinson v. Springfield Local School Dist. Bd. of Edn.*, 9th Dist. Summit No. 20606, 2002-Ohio-1382, ¶ 18 (collecting cases). But with respect to claim preclusion, "an existing final judgment or decree between the parties is conclusive as to all claims that were or might have been litigated in a first lawsuit." *Brooks v. Kelly*, 144 Ohio St.3d 322, 2015-Ohio-2805, 43 N.E.3d 385, ¶ 7.

{¶ 34} Claim preclusion does not bar Ogle's claim. If, as Ogle contends, her sentence is void, then she is permitted to attack it collaterally, notwithstanding the fact that she could have raised the issue in her direct appeal. *See, e.g.*, *State v. Davis*, 10th Dist. Franklin No. 19AP-419, 2019-Ohio-4956, ¶ 10 ("an exception to the application of res judicata applies to void judgments"). Since I would not overrule *Ogle II*, 167 Ohio St.3d 181, 2021-Ohio-4453, 190 N.E.3d 594, in my view, the sole question this appeal presents is whether Ogle's precise claim—that she was denied counsel at her sentencing—was actually decided on the merits in a prior appeal.

{¶ 35} Ogle's direct appeal of her conviction consisted of six separate appeals that the Fourth District consolidated for decision. *See State v. Ogle*, 4th Dist. Hocking Nos. 11CA29, 11CA32, 12CA2, 12CA11, 12CA12, and 12CA19, 2013-Ohio-3420, ¶ 1 ("*Ogle I*"). Ogle's notice of appeal from the conviction itself was assigned case No. 11CA29. *Ogle I* at ¶ 50. It is undisputed that Ogle did not raise the right-to-counsel issue in case No. 11CA29.

{¶ 36} In one of the other appeals consolidated by the court of appeals—case No. 11CA32—Ogle asserted five assignments of error:

> 1. The trial court erred as a matter of law to commence sentencing for which it had no jurisdiction.
>
> 2. The trial court erred as a matter of law to commence sentencing in violation of appellant's 6th and 14th Amendment rights and Criminal Rule 44.
>
> 3. The trial court erred as a matter of law in revoking appellant's bond in violation of appellant's 6th and 14th Amendment rights and Criminal Rule 44.

> 4. The trial court erred in revoking appellant's bond in advance of any violation of bond, showing good cause, or confrontation.
>
> 5. The trial court erred in ordering a bench warrant in its November 28, 2011 Journal Entry pursuant to the November 22, 2011 order and notice.

(Capitalization deleted.) *Ogle I* at ¶ 53.

{¶ 37} The Sixth and Fourteenth Amendments to the United States Constitution guarantee that every criminal defendant brought to trial in any state has the right to the assistance of counsel in his or her defense. *State v. McAlpin*, 169 Ohio St.3d 279, 2022-Ohio-1567, 204 N.E.3d 459, ¶ 45. And Crim.R. 44(A) provides that if a defendant charged with

> a serious offense[1] is unable to obtain counsel, counsel shall be assigned to represent the defendant at every stage of the proceedings from [his] initial appearance before a court through appeal as of right, unless the defendant, after being fully advised of [his] right to assigned counsel, knowingly, intelligently, and voluntarily waives [his] right to counsel.

By expressly citing these provisions in case No. 11CA32, Ogle asserted that she had been denied the right to counsel at her sentencing hearing (the second assignment of error) and at her bond-revocation hearing (the third assignment of error).

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1. The Rules of Criminal Procedure define "serious offense" as "any felony, and any misdemeanor for which the penalty prescribed by law includes confinement for more than six months." Crim.R. 2(C).

{¶ 38} Based on these facts, appellees, the Hocking County Common Pleas Court and Judge Dale Crawford (collectively, "the trial court"), contend that res judicata applies to Ogle's claims because (1) she was required to raise the right-to-counsel issue in her first-filed appeal, case No. 11CA29, or (2) the court of appeals decided case No. 11CA32 on the merits. As explained above, the trial court's first assertion is a nonstarter. Claim preclusion—the version of res judicata that makes a final judgment conclusive as to all claims that were raised or *could have been raised*—does not apply to void judgments. *Davis*, 2019-Ohio-4956, at ¶ 10. If Ogle's sentence is void, she is permitted to attack it collaterally.

{¶ 39} Whether *Ogle I*, 2013-Ohio-3420, decided the issues raised in case No. 11CA32 on their merits is a more complicated question. As noted above, the assignments of error in that appeal alleged the denial of counsel at both the bond-revocation hearing and the sentencing hearing. The Fourth District focused primarily on the bond-revocation-hearing claim but ultimately concluded that both claims were moot:

> [Ogle's] assignments of error under this case number [11CA32] essentially relate to the bond orders which (1) restrained her freedom on September 16, 2011, when she was placed on electronically monitored house arrest, and (2) further placed restraint when she was taken into custody on November 28, 2011.
> * * *
>
> * * *
>
> In this matter, we have affirmed [Ogle's] conviction in her first appeal, appellate case number 11CA29. Since the underlying conviction is not at issue by our disposition of the appeal set forth under case number 11CA29, no relief can be granted [her]. The bond orders restrained her freedom beginning September 16, 2011.

> She has served the incarceration portion of her sentence and remains on community control. We find any issues with regard to the trial court's bail decisions which restrained her freedom after September 16, 2011 are now moot. As such, we overrule [Ogle's] five assignments of error under this appellate case number and affirm the judgment of the trial court.

Ogle I at ¶ 56-58.

{¶ 40} As noted above, res judicata applies only when there has been a final judgment entered on the merits. *See also Grava*, 73 Ohio St.3d at 381, 653 N.E.2d 226. In *Ogle I*, the court of appeals stated, "[B]ecause we find [Ogle's] arguments to be moot, we decline to reach the merits." *Id.* at ¶ 55. The denial of a claim based on mootness is not a judgment on the merits and does not bar the same claim from being raised subsequently. *Crestmont Cleveland Partnership v. Ohio Dept. of Health*, 139 Ohio App.3d 928, 933-934, 746 N.E.2d 222 (10th Dist.2000); *see State ex rel. Commt. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239, ¶ 33 (citing *Crestmont* with approval). Because the court of appeals deemed Ogle's assignments of error in case No. 11CA32 moot, Ogle's mandamus and prohibition claims are not barred by res judicata.

{¶ 41} Resisting this result, the trial court suggests that in the court of appeals' resolution of the issues under case No. 11CA32 in *Ogle I*, it deemed moot only Ogle's claims concerning the bond-revocation hearing. By failing to address her assignments of error concerning the sentencing hearing separately, the trial court suggests, the court of appeals in *Ogle I* implicitly overruled them. But that reading of *Ogle I* is belied by the court of appeals' determination in that case that "all assignments of error in case number 11CA32 are moot." *Id.* at ¶ 1; *see also id.* at ¶ 58 ("we overrule [Ogle's] five assignments of error [in case No. 11CA32]").

Conclusion

{¶ 42} I agree with the majority that public policy dictates that litigation end at some point, but I do not believe that this court should overrule its own precedent, without basis, simply to put this case to bed. I would uphold our determination in *Ogle II*, 167 Ohio St.3d 181, 2021-Ohio-4453, 190 N.E.3d 594, that Ogle's conviction was void, not voidable, and I would hold that res judicata does not bar Ogle's claims. I would thus reverse the judgment of the Fourth District and remand the case to that court for further proceedings.

Melanie A. Ogle, pro se.

Randall L. Lambert and Cassaundra L. Sark, for appellees.

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HOCKING COUNTY

State ex rel. Melanie A. Ogle,

Relator,

v.

Hocking County Common Pleas Court, et al.,

Respondents.

Case No. 20CA9

JUDGMENT ENTRY

Per Curiam.

This case is before the Court on remand following the Supreme Court of Ohio's decision affirming this Court's denial of the motion for disqualification of attorney Randall L. Lambert and reversing this Court's dismissal of the prohibition and mandamus claims. For the reasons set forth below we grant Respondents' motion for summary judgment and dismiss Relator's complaint for writs of mandamus and prohibition.

I. PROCEDURAL BACKGROUND

Relator, Melanie A. Ogle, was indicted on one count of assault on a peace officer as a result of events that occurred at her residence on September 9, 2009 with a Hocking County Sheriff's Deputy. *State v. Ogle*, 4th Dist. Hocking No. 11CA29, 2013-Ohio-3420. Ogle was released on a $5,000 recognizance bond and retained two attorneys to represent her at trial. On August 11, 2011, a jury found Ogle guilty of one count of assault on a peace officer in violation of R.C. 2903.13(A), a felony of the fourth degree. At the conclusion of the trial, Judge Dale A. Crawford, sitting by assignment in the Hocking County Common Pleas Court, continued her bond as she awaited sentencing. After trial,

APPENDIX B

Ogle's attorneys filed motions to withdraw as counsel. The motions were granted and Ogle retained two new attorneys to represent her while she awaited sentencing.

Prior to sentencing, it was alleged that Ogle made contact with a juror. The trial court conducted a hearing where Ogle appeared with her retained counsel. Judge Crawford continued the bond, but added a condition that "defendant is to have no contact, direct or indirect, with any juror, witness, lawyer or the Court while on bond" and that "defendant shall be placed on house arrest with electronic monitoring." Shortly after this bond hearing, Ogle's two new attorneys filed motions to withdraw stating, "Melanie Ogle has advised counsel that she no longer desires to have counsel represent her in this matter. On or about 19, September 2011 defendant, Melanie Ogle called and terminated the agreement between counsel and defendant." The trial court granted the motions to withdraw. On September 21, 2011, Ogle filed a "Notice of Pro Se Appearance" in which she stated she "knowingly, intelligently and voluntarily waives her right of counsel to represent herself in this case at this time, or until subsequent notice."

On September 27, 2011, Ogle appeared for sentencing without counsel and asserted that she was revoking her waiver of her right to counsel. When asked by Judge Crawford whether she tried to retain counsel, Ogle responded, "I have an inability to obtain counsel." However, when asked whether she wanted the court to appoint counsel for her, she responded, "I have an inability to obtain counsel." When asked again whether she wanted the court to appoint counsel, Ogle responded, "I do not waive my right to counsel and I have an inability to obtain counsel." At no point did Ogle indicate any reason for her inability to obtain counsel, nor did she indicate that she wanted the court to appoint counsel. She also refused to complete an affidavit of indigency in order to qualify for a

court-appointed attorney. Judge Crawford then proceeded to sentence Ogle to six months in jail, a three-year term of community control, restitution in the amount of $792.65, and a $2,500 fine plus court costs. The judgment entry was journalized on September 28, 2011.

In a consolidated appeal, Ogle appealed various judgment entries of the Hocking County Common Pleas Court (Hocking App. Nos. 11CA29, 11CA32, 12CA2, 12CA11, 12CA12, and 12CA19). The appellate cases stemmed from the initial conviction for assault on a peace officer, and a subsequent case where Ogle was alleged to have damaged the electronic ankle bracelet monitor that had been ordered as a condition of bond pending her sentencing hearing.

In this Court's July 26, 2013 decision, we affirmed the judgment of the trial court. *State v. Ogle*, 4th Dist. Hocking No. 11CA29, 2013-Ohio-3420.

On September 30, 2020, Ogle filed a complaint for writ of mandamus and/or prohibition. Ogle's complaint alleged that Judge Crawford and/or Hocking County Common Pleas Court exceeded their authority and violated Ogle's "constitutional rights to counsel under the Sixth and Fourteenth Amendments and Ohio law during this Court's 'sentencing hearing' on September 27, 2011." Ogle requested "a writ of mandamus and/or prohibition which serves to vacate of record, the unauthorized by law, and therefore, unlawful and void September 28, 2011 JUDGMENT ENTRY OF CONVICTION AND SENTENCE in Hocking County Common Pleas Court Case No. 090CR125 against her, and all other subsequent entries and order filed * * *, and any and all other relief for which Melanie A. Ogle is entitled."

On January 7, 2021 we dismissed Ogle's complaint for writs of mandamus and prohibition and denied her motion to disqualify Attorney Randall L. Lambert. Ogle filed an

appeal of that decision to the Supreme Court of Ohio. On December 21, 2021, the Supreme Court affirmed the denial of the motion for disqualification, but reversed the dismissal of the prohibition and mandamus claims and remanded the case for further proceedings. Subsequently, Respondents filed an answer to the complaint. On March 11, 2022, Ogle filed a motion for judgment on the pleadings. On March 31, 2022, Respondents filed a response opposing Ogle's motion for judgment on the pleadings. Respondents also filed a motion for summary judgment on March 25, 2022. Ogle filed a reply to Respondents' response in opposition to her motion for judgment on the pleadings on April 7, 2022. On May 9, 2022 Ogle filed a response to the motion for summary judgment. On May 18, 2022 Respondents filed a reply in support of the motion for summary judgment.

II. LAW AND ANALYSIS

Ogle argues that her sentence is void because Judge Crawford had no jurisdiction to hold the September 27, 2011 sentencing hearing, because she had not waived her right to counsel. Ogle relies on the United States Supreme Court's decision in *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), to support her assertion that if there is no valid waiver of the right to counsel at trial, then the resulting conviction is void.

On appeal, the Supreme Court of Ohio agreed with Ogle and found that there was "no dispute that Judge Crawford exercised judicial authority" and that "Ogle has stated a colorable claim that Judge Crawford violated her Sixth Amendment rights when he ordered her to not communicate with any lawyer and then sentenced her and that this error rendered the sentencing entry void." *State ex rel. Ogle v. Hocking Cty. Common Pleas Court*, 2021-Ohio-4453, ¶¶ 11,19. The Supreme Court, having found the sentence void,

remanded the case for further proceedings.

Ogle argues that "a void judgment is 'a judgment that has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally.' " *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 33, quoting *Black's Law Dictionary* (8th Ed.2004) page 861. In the Supreme Court's decision remanding this case, the majority stated, "Judge Crawford may (or may not) have a meritorious res judicata defense, but that issue is premature at this stage of the proceedings." *Ogle* at ¶ 19. In their motion for summary judgment Respondents assert Ogle's claims are barred by res judicata.

"The doctrine of res judicata provides that a final judgment rendered on the merits by a court of competent jurisdiction is a complete bar to any subsequent action on the same claim between the same parties or those in privity with them." *State ex rel. Oliver v. Turner*, 153 Ohio St.3d 605, 2018-Ohio-2102, 109 N.E.3d 1204, ¶ 15, citing *State ex rel. Jackson v. Ambrose*, 151 Ohio St.3d 536, 2017-Ohio-8784, 90 N.E.3d 922, ¶ 13.

> Application of res judicata requires four things: "(1) there was a prior valid judgment on the merits; (2) the second action involved the same parties as the first action; (3) the present action raises claims that were or could have been litigated in the prior action; and (4) both actions arise out of the same transaction or occurrence." *Reasoner v. Columbus*, 10th Dist. Franklin No. 04AP-800, 2005-Ohio-468, 2005 WL 289574, ¶ 5.

Brown v. State, 6th Dist. No. L-18-1044, 2019-Ohio-4376, 147 N.E.3d 1194, ¶ 20.

In the case sub judice, Ogle has in fact already presented her arguments regarding 1) the trial court's lack of jurisdiction to sentence her and 2) the violation of her Sixth and Fourteenth Amendment rights to this Court in her initial appeal, *State v. Ogle*, 4th Dist. Hocking No. 11CA29, 2013-Ohio-3420. Two of Ogle's assignments of error read:

I. THE TRIAL COURT ERRED AS A MATTER OF LAW TO COMMENCE SENTENCING FOR WHICH IT HAD NO JURISDICTION.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW TO COMMENCE SENTENCING IN VIOLATION OF APPELLANT'S 6TH AND 14TH AMENDMENT RIGHTS AND CRIMINAL RULE 44.

Id. at ¶ 53. These assignments of error were both overruled. *Id.* at ¶ 58. These assignments of error are the same claims presented in her complaint for a writ of mandamus/prohibition.

Ogle's complaint alleged that Judge Crawford and/or Hocking County Common Pleas Court exceeded their authority and violated Ogle's "constitutional rights to counsel under the Sixth and Fourteenth Amendments and Ohio law during this Court's 'sentencing hearing' on September 27, 2011." In support of her complaint Ogle also alleged the sentencing entry was "unlawful and void" and that Judge Crawford lacked jurisdiction over her. Because there was a prior valid judgment on the merits concerning these issues, the first element of res judicata has been met.

Ogle's complaint for a writ of mandamus/prohibition involves the same parties as her initial appeal. Thus, the second element of res judicata has been met. The present action raises claims that were or could have been litigated in the prior action. Because Ogle could have and *did* raise these issues in her initial appeal, the third element of res judicata has been met. And finally, the fourth element of res judicata has been met as both of the actions arise out of the same transaction or occurrence that was the subject matter of the first action. Thus, we find that Respondents have raised a meritorious res judicata defense.

III. CONCLUSION

Because Ogle's claims are barred by res judicata, she is not entitled to relief in mandamus or prohibition and we must grant Respondents' motion for summary judgment. Ogle's motion for judgment on the pleadings is denied. The complaints for writs of mandamus and prohibition are **DISMISSED. ANY PENDING MOTIONS ARE DENIED AS MOOT. COSTS TO RELATOR. IT IS SO ORDERED.**

FOR THE COURT

Jason P. Smith
Presiding Judge

Peter B. Abele
Judge

Kristy S. Wilkin
Kristy J. Wilkin
Judge

NOTICE

This document constitutes a final judgment entry and the time period for appeal commences from the date of filing with the clerk.

Pursuant to Civ.R. 58(B), the clerk is ORDERED to serve notice of the judgment and its date of entry upon the journal on all parties who are not in default for failure to appear. Within three (3) days after journalization of this entry, the clerk is required to serve notice of the judgment pursuant to Civ.R. 5(B), and shall note the service in the appearance docket.

The Supreme Court of Ohio

State ex rel. Melanie A. Ogle	Case No. 2022-1052
v.	RECONSIDERATION ENTRY
Hocking County Common Pleas Court	Hocking County

It is ordered by the court that the motion for reconsideration in this case is denied.

It is further ordered that appellees' motion to set response deadline is denied as moot.

(Hocking County Court of Appeals; No. 20CA9)

Sharon L. Kennedy
Chief Justice

APPENDIX C

CASE NO. 2022 - 1052

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE FOURTH DISTRICT COURT OF APPEALS
HOCKING COUNTY, OHIO
Case No. 20CA9

Melanie A. Ogle
Relator-Appellee

vs.

Hocking County Common Pleas Court
and
Judge Dale A. Crawford
Respondents-Appellants

MOTION FOR RECONSIDERATION

Relator-Appellee

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Counsel for Respondents-Appellants

Attorney Randall L. Lambert
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APPENDIX D

Now comes Relator-Appellee, Melanie A. Ogle, and hereby files a Motion for Reconsideration of this Court's October 3, 2023 decision in this case.

This appeal was about the Fourth District Appellate Court erring in its January 7, 2021 decision and judgment entry when it concluded in its July 14, 2022 Judgment Entry, that RelatorAppellant's claims in her complaint for writs of mandamus and prohibition "are barred by res judicata, she is not entitled to relief in mandamus or prohibition" in granting Respondents-Appellees' motion for summary judgment and her complaint is "dismissed" **by relying upon a non-existent fact of record** in order to establish that, "the first element of res judicata has been met.

Yet this Court permitted it to evolve into litigation of the "res judicata" of a "void"/"voidable" argument by Respondents that the appellate court never decided.

Relator first addresses this Court's LAW and ANALYSIS in its October 3, 2023 Opinion.

{¶ 15} This Court states that, "[w]here a judgment of conviction is rendered by a court having jurisdiction over the person of the defendant and jurisdiction of the subject matter, such judgment is not void, and the cause of action merged therein becomes res judicata as between the state and the defendant." *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph six of the syllabus.

The above referenced previous case opinion does not reference any instances of person(s) sentenced to imprisonment for an offense, absent a knowing and intelligent waiver, without counsel.

{¶ 16} This Court states that, "Subject-matter jurisdiction refers to the constitutional or statutory power of a court to adjudicate a particular class or type of case." *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 23, citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 11-12, 34."

In doing so, this Court ignores {¶ 4} in *Harper*, that the accused must be ***"properly before the court"***:

> When a case is within a court's subject-matter jurisdiction **and the accused is properly before the court**, any error in the exercise of that jurisdiction in imposing postrelease control renders the court's judgment voidable, permitting the sentence to be set aside if the error has been successfully challenged on direct appeal.

Neither Respondents nor this Court have given any reasons as to how Relator was properly before the court without counsel for a sentencing hearing on a felony charge with even the possibility of imprisonment, let alone, actual imprisonment.

{¶ 17} This Court states that, "The Hocking County Court of Common Pleas, then, was the proper forum to sentence Ogle for her felony offense. Consideration of the question whether the trial court denied her right to counsel concerns the rights of the parties, not the adjudicatory power of the court. The trial court had subject-matter jurisdiction over the case, and 'when a specific action is within a court's subject-matter jurisdiction, any error in the exercise of that jurisdiction renders the court's judgment voidable, not void,' id. at ¶ 26."

Black's Law Dictionary (7th ed. 1999) defines "void" as "[o]f no legal effect", and "voidable" as "[v]alid until annulled".

{¶ 18} This Court states, "However, the United States Supreme Court no longer treats a violation of the right to counsel—either entirely or during a critical phase of the proceeding—as an error divesting the trial court of jurisdiction.", referring to "The majority relied on *Zerbst*, 304 U.S. at 468, 58 S.Ct. 1019, 82 L.Ed. 1461, for the proposition that a court's denial of a defendant's right to counsel in violation of the Sixth Amendment to the United States Constitution deprives the court of jurisdiction and renders any resulting judgment of conviction void."

This Court in ¶ 19, 20, 21, cites numerous federal cases as being in support of their statements in {¶ 18}, all of which do not.

As in the actual paragraph in *Withrow v. Williams* (regarding federal habeas review) cited by this Court in {¶ 19} as being "relevant here", is:

> At common law, the opportunity for full and fair litigation of an issue at trial and (if available) direct appeal was not only *a* factor weighing against reaching the merits of an issue on habeas; it was a *conclusive* factor, unless the issue was a legal issue going to the jurisdiction of the trial court. See *Ex parte Watkins, supra* at 202-203; W. Church, Habeas Corpus § 363 (1884). Beginning in the late 19th century, however, that rule was gradually relaxed, by the device of holding that various illegalities deprived the trial court of jurisdiction. See, *e. g., Ex parte Lange,* 18 Wall. 163, 176 (1874) (no jurisdiction to impose second sentence in violation of Double Jeopardy Clause); *Ex parte Siebold,* 100 U. S. 371, 376-377 (1880) (no jurisdiction to try defendant for violation of unconstitutional statute); *Frank* v. *Mangum,* 237 U. S. 309 (1915) (no jurisdiction to conduct trial in atmosphere of mob domination); *Moore* v. *Dempsey,* 261 U. S. 86 (1923) (same); *Johnson* v. *Zerbst,* 304 U. S. 458, 468 (1938) (no jurisdiction to conduct trial that violated defendant's Sixth Amendment right to counsel). See generally *Wright* v. *West,* 505 U. S. 277, 285-286 (1992) (opinion of Thomas, J.); *Fay, supra,* at 450-451 (Harlan, J., dissenting). Finally, the jurisdictional line was openly abandoned in *Waley* v. *Johnston,* 316 U. S. 101, 104-105 (1942). See P. Bator, D.

> Meltzer, P. Mishkin, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 1502 (3d ed. 1988) (hereinafter Hart and Wechsler).

And relative to its understanding, in its following paragraph:

> But to say that prior opportunity for full and fair litigation no longer *automatically* precludes from consideration even nonjurisdictional issues is not to say that such prior opportunity is no longer a relevant equitable factor. Reason would suggest that it must be, and *Stone* v *Powell, supra,* establishes that it is.

In {¶ 20}, this Court then states that, "The Supreme Court departed from these earlier cases in *Waley v. Johnston*, 316 U.S. 101, 104-105, 62 S.Ct. 964, 86 L.Ed. 1302 (1942), holding that 'the use of the writ in the federal courts to test the constitutional validity of a conviction for crime is not restricted to those cases where the judgment of conviction is void for want of jurisdiction of the trial court to render it.'"

The actual paragraph in *Waley v. Johnston* at "105" reads (that *Waley v. Johnston* did not "depart[ ] from these earlier cases"):

> "In such circumstances the use of the writ in the federal courts to test the constitutional validity of a conviction for crime is not restricted to those cases where the judgment of conviction is void for want of jurisdiction of the trial court to render it. It extends also to those exceptional cases where the conviction has been in disregard of the constitutional rights of the accused, and where the writ is the only effective means of preserving his rights. *Moor* v. *Dempsey* 261 U.S. 86; *Mooney* v. *Holohan,* 294 U.S. 103; *Bowen* v. *Johnston,* 306 U.S. 19, 24."

Additionally in {¶ 20}, this Court stated that, "In *Waley*, the Supreme Court 'openly discarded the concept of jurisdiction' that was articulated in cases such as *Zerbst* as a concept that had become 'more a fiction than anything else,' *Wainwright v. Sykes*, 433 U.S. 72, 79, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977)."

Respondents have not provided any language within *Waley* v. *Johnston,* stating that the court "discarded the concept of jurisdiction", it "extended" on those cases, nor did *Wainwright v. Sykes* provide any such language from *Waley* v. *Johnston.*

This Court's last three federal court references to civil case in {¶ 20} have no relationship to a critical stage of a criminal proceeding where a defendant's liberty is at stake.

This Court's reference in {¶ 21} to *United States v. Cronic*, 466 U.S. 648, 658-659, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), is drafted in a way to appear to support its previous opinion in *Bozsik v. Hudson*:

> Although a sentence imposed in violation of the Sixth Amendment right to counsel is a structural error that is reversible on appeal, *see United States v. Cronic*, 466 U.S. 648, 658-659, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), fn. 25, such a sentence is not void ab initio for lack of subject-matter jurisdiction, *see Bozsik v. Hudson*, 110 Ohio St.3d 245, 2006-Ohio-4356, 852 N.E.2d 1200, ¶ 9 (explaining that an invalid waiver of counsel does not deprive the trial court of jurisdiction).

Cronic is a federal trial court case regarding a claim of ineffective assistance of counsel, and does not involvthe sentencing of a person to imprisonment for an offense, absent a knowing and intelligent waiver, without counsel. *Cronic* also makes no reference to "structural error" or any version of the word "void".

Relator also filed a state habeas for release of her unlawful imprisonment against the SEORJ warden with the Athens County Clerk of Courts for the 4th District Court of Appeals. The day after the warden was served, he instructed his guards to take Relator to the Franklin County Corrections Center II, which was unlawfully arranged by the

Hocking County Sheriff (against whom the Ogles had an open civil conspiracy to commit trespass case pending appeal). There was no warrant removal or court order of any kind authorizing Relator to be transferred to the custody of any other facility. The warden then filed a motion to dismiss because Relator was no longer in his custody and the court obliged. The Franklin County Sheriff could provide no documentation to Relator or her husband regarding his custody of Relator, but to write in a letter that he was "holding" her for Hocking County. Relator then filed a habeas for release of her unlawful imprisonment against the Franklin County Sheriff with Franklin County Clerk of Courts for the 5th District Court of Appeals. Relator was repeatedly denied a notary for her affidavit and was verbally and physically threatened – picked up and thrown against the wall then dragged around and thrown onto the cot – after one gang of three deputies learned of her habeas petition against the sheriff. Her petition was dismissed for lack of notarization despite her statement that she had been repeatedly refused one for two weeks.

Relator filed multiple motions for staying the execution and remaining execution of the unlawful sentence of impriosnment, and post-conviction motions to vacate, all but one denied without reason, including this Court.

After the Ogles went to trial in federal court in January, 2015, for civil rights violations against the deputy (who falsely accused the Ogles of acts and crimes and claimed he was a victim of assault), the county's attorney for the deputy (the same as for Respondents in this case) sought to settle the case after his client was caught in multiple

contradictions before the jury about what he had testified took place, compared to his state court testimony against Relator. The Ogles settled for $60,000 and the transcripts. Relator then filed a federal habeas action in 2015 including the new evidence, as well as Sixth Amendment right to counsel violations, as Respondents had extended the community control sentence against her to 5 years. The action was not final until 2019. It was ultimately denied for procedural default on all claims. Relator was preparing to take her new evidence before the party trial court in this case when she discovered this Court's decisions regarding void sentences in mandamus and prohibition actions. Relator did not simply wait to file her mandamus/prohibition case for 7 years (and while she was also ill). She chose the mandamus/prohibition action first. There was no expectation that she could get a fair review of her new evidence before the trial court's actions were declared unauthorized, unlawful, and void by a higher court.

Respondents and this Court have only cited state law cases regarding "subject-matter jurisdiction", "void" and "voidable" opinions. Their reasoning appears to be that all constitutional violations are always "voidable", or in other words, "valid", yet they cannot provide one single case in support of a "voidable" vs. "void" sentence, wherein a sentence of imprisonment was ordered against a person who is without counsel and has not waived her right to counsel.

Respondents cite no criminal law in support of their "personal jurisdiction" argument and this Court provides no explanation as to how Relator could have been "properly before the court" as stated is necessary in *Harper.* The record shows that

Relator did not submit to "personal jurisdiction" to be sentenced to imprisonment or possible imprisonment or in the hearing to commence imprisonment in absence of counsel, and in fact objected numerous times.

Respondents and this Court has not cited any case law that involves authority of a state criminal trial court to sentence a person to imprisonment for an offense, absent a knowing and intelligent waiver, without counsel.

Respondents and this Court have treated relative cases like the plague, including:

State v. Wellman, 37 Ohio St. 2d 162 (citing *Johnson* v. *Zerbst* (1938), 304 U. S. 458, 464, *Carnley* v. *Cochran* (1962), 369 U. S. 506, 516 , *Gideon* v. *Wainwright* (1963), 372 U. S. 335; *Burgett* v. *Texas* (1967), 389 U. S. 109; *Argersinger* v. *Hamlin* (1972), 407 U. S. 25; and,

State v. Tymcio (1975), 42 Ohio St.2d 39 (citing Criminal Rule 44 and the Federal Criminal Justice Act of 1964; *Argersinger v. Hamlin* (1972), 407 U.S. 25 and *Gideon v. Wainwright* (1963), 372 U.S. 335.)

The Court made clear in its 1972 decision in *State v. Wellman*, 37 Ohio St. 2d 162, that:

> The Sixth Amendment to the United States Constitution mandates the assistance of counsel to a defendant in a criminal trial. The Fourteenth Amendment makes the Sixth Amendment applicable to the states, and **it is unconstitutional to try a person for a felony in a state court unless he has a lawyer or has validly waived one.** *Gideon* v. *Wainwright* (1963), 372 U. S. 335; *Burgett* v. *Texas* (1967), 389 U. S. 109.
>
> Since *Gideon,* the United States Supreme Court, in *Argersinger* v. *Hamlin* (1972), 407 U. S. 25, made the requirement of assistance of counsel applicable to all criminal prosecutions, including prosecutions for violations

> of municipal ordinances, if a sentence to jail resulted. That latter opinion holds, at page 37, that "* * * **absent a knowing and intelligent waiver, no person may be imprisoned for any offense**, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial."

This Court made clear to the trial courts in its 1975 decision in *State v. Tymcio* (1975), 42 Ohio St.2d 39, that:

> The constitutionally protected right to the assistance of counsel is **absolute**. When an accused is financially able, in whole or in part, to obtain the assistance of counsel, but is **unable to do so for whatever reason, appointed counsel must be provided**.
>
> (citing Criminal Rule 44 and the Federal Criminal Justice Act of 1964; citing *Argersinger v. Hamlin* (1972), 407 U.S. 25 and *Gideon v. Wainwright* (1963), 372 U.S. 335.)

The undisputed prohibition against the trial court sentencing Relator to imprisonment, ordering the commencement of her imprisonment, then 4 months later ordering a "holder" on her imprisonment, and then 2 months later revising the "community control" sentence subject to add an additional 2 years of "community control" with the threat of physical force by arrest of "prison term of one year", were unlawful acts, not "valid" acts.

The State of Ohio by statute or its Constitution does not authorize, nor can it authorize, a trial court to disregard the Constitutional mandate prohibiting the imprisonment of any person **absent a knowing and intelligent waiver**, who is without counsel. Respondents did not commit an "error".

Respondents did not have any authority to disregard either state or federal law regarding Constitutional mandate prohibiting the imprisonment of any person **absent a**

knowing and intelligent waiver, who is without counsel.

"[T]he doctrine of res judicata is to be applied in particular situations as fairness and justice require, *and that it is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice.*" *Henderson,* 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, quoting 46 American Jurisprudence 2d, Judgments, Section 522, at 786-787 (1994).

Neither Respondents nor this Court have provided any comment as to the effect the outstanding costs in Case No. 09CR0125 against Melanie A. Ogle, in the amount of "$6,308.40", have in relationship to her collateral claim.

Relator objects to this Court's "facts and procedural history" as being both inaccurate and lacking, so as to convince the reader to a parsed, rather than a complete view. Relator's pleadings of record in the original action, including her Affidavit and Notice of Pro Se Appearance to file a Motion for Recission of the unlawful bond order that was filed days prior to the unlawful sentencing hearing (and was denied by the trial court) a copy of which was attached to her Opposition to Respondents' Motion for Summary Judgment provide the truth against Respondents' numerous false accusations.

The sentence of imprisonment against Relator was not merely a "voidable" "error" and was not "valid", it was intentional and unlawful from its inception, and it is therefore, void. Relator is entitled to relief she has sought.

The act of a trial court imposing a sentence of imprisonment when the defendant accused of a felony crime is without counsel and has not waived her right to counsel, is

hopefully rare in Ohio, but it is no less an unlawful act. The constitutional mandate prohiting the act does not allow for a trial court to test it. It is a rather simple concept and the abundant case law and criminal rules are not complicated to follow, yet Respondents continue not to accept them.

Respectfully submitted,

Melanie A. Ogle
11575 Donaldson Road
Rockbridge, Ohio 43149
740-385-5959

CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Reconsideration has been mailed this 13th day of October, 2023 to:

Attorney Randall L. Lambert
Attorney Cassaundra L. Sark
Counsel of record for
Hocking County Common Pleas Court
and
Judge Dale A. Crawford
215 South Fourth Street
P.O. Box 725
Ironton, OH 45638

Melanie A. Ogle
11575 Donaldson Road
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740-385-5959

IN THE COURT OF COMMON PLEAS, HOCKING COUNTY, OHIO

STATE OF OHIO,

PLAINTIFF

VS.

MELANIE A. OGLE

DEFENDANT

CASE NUMBER 09CR0125

JUDGE DALE A. CRAWFORD
(BY ASSIGNMENT)

JUDGMENT ENTRY OF CONVICTION AND SENTENCE

This matter came before the Court for a jury trial on August 9, 10, and 11, 2011. Present before the Court was Defendant Melanie Ogle, with counsel, Attorney Tod A. Brininger and Attorney Steven T. Fox. Special Prosecuting Attorney Timothy P. Gleeson represented the State of Ohio, assisted by Troy Howdyshell.

After a jury was selected, the parties presented opening statements, evidence, and closing arguments. Upon receiving instructions from the Court, the jury deliberated upon the case. On August 11, 2011, the jury returned its verdict finding Defendant Melanie Ogle guilty of *Assault on a Peace Officer*. The Court accepted the jury's verdict, and hereby enters a judgment of conviction finding Defendant Melanie Ogle guilty of committing *Assault on a Peace Officer*, in violation of R.C. 2903.13(A) / 2903.13(C)(4), as a felony of the fourth degree.

The Court referred the matter for a presentence investigation and deferred sentencing until a later date.

On September 27, 2011, the matter came before the Court for a sentencing hearing. Defendant Melanie Ogle was present before the Court without counsel. Special Prosecuting Attorney Timothy P. Gleeson appeared with Troy Howdyshell on behalf of the State of Ohio.

The Court notified Defendant Melanie Ogle that she had a right to counsel for these proceedings, and a right to court appointed counsel at no cost to her if indigent. Defendant Melanie

APPENDIX E

Ogle expressed that she would not waive her right to counsel. The Court advised the Defendant that she had the right to counsel appointed by the Court at no expense. She refused the Court's offer of appointed counsel. On September 21, 2011 the Defendant filed a signed "Motion of Pro Se Appearance" waiving her right to counsel. The Court finds that the Defendant knowingly and voluntarily waved her right to counsel.

WHEREUPON the Court proceeded to sentencing, invited both parties to provide statements or recommendations, and afforded Defendant Melanie Ogle all rights pursuant to Rule 32 of the Ohio Rules of Criminal Procedure. The Court considered the record, the presentence investigation report, and oral statements made. The Court also considered the purposes and principles of sentencing under R.C. 2929.11, as well as the seriousness and recidivism factors under R.C. 2929.12.

The Court finds that Defendant Melanie Ogle was found guilty of and has been convicted of *Assault on a Peace Officer*, in violation of R.C. 2903.13(A) / 2903.13(C)(4), as a fourth degree felony. It is hereby ordered that Defendant Melanie Ogle serve a period of Community Control for 3 years. As a condition of Community Control the Defendant shall do the following sanctions:

1. Defendant Melanie Ogle shall serve a term of six months (180 days) in county jail.
2. Upon her release from county jail, Defendant Melanie Ogle shall be subject the control and supervision of the adult probation officer of this Court for a term 3 years. Defendant Melanie Ogle shall report to the adult probation department within 3 days from her release from County jail.
3. Defendant Melanie Ogle shall comply with all of the standard rules and regulations of A.P.A. supervision.
4. If the Defendant fails to complete the sanctions imposed she will serve a sentence of twelve months in the Ohio Department of Rehabilitation and Corrections.

The Court further imposes the following financial sanction upon Defendant Melanie Ogle.

A. Defendant Melanie Ogle shall pay to the Clerk of Courts $792.65 as and f or restitution, to be disbursed to Trent Woodgeard.

B. Defendant Melanie Ogle shall pay a fine of $2,500.00.

C. Defendant Melanie Ogle to pay all court costs incurred in this case, including any fees permitted pursuant to R.C. 2929.18(A)(4), with payment to commence upon release.

The execution of the county jail term is deferred until October 27, 2011. The Court will direct Defendant Melanie Ogle where to report on October 27th by a separate Entry.

JUDGE DALE A. CRAWFORD
(BY ASSIGNMENT)

Submitted by:

Timothy P. Gleeson, 0046674
Special Prosecuting Attorney
47 North Market Street, Suite 204
Post Office Box 148
Logan, Ohio 43138
(740) 385-7979

This is a [illegible] Within three [illegible] and counsel pursuant to Rule 5 (B). Endorsed service and journalized on 09/28/11

Service on: Special Prosecuting Attorney Timothy P. Gleeson and Melanie A. Ogle

Deputy Clerk

COPY

IN THE COURT OF COMMON PLEAS, HOCKING COUNTY, OHIO

STATE OF OHIO, :

Plaintiff, : Case No. 09CR0125

vs. :

MELANIE OGLE, : TRANSCRIPT OF PROCEEDINGS

Defendant. :

- - -

BE IT REMEMBERED THAT, heretofore, to-wit: on Tuesday, the 27th day of September, 2011, one of the regular days of the 2011 (Third Part) Term of the Court of Common Pleas, Hocking County, Ohio, General Division, the above styled cause came on for sentencing before the Hon. Dale A. Crawford, sitting by assignment, and the following proceedings were had:

APPENDIX F

APPEARANCES:

Timothy P. Gleeson
Special Assistant Prosecuting Attorney
88 South Market Street
Logan, Ohio 43138

Present on Behalf of the Plaintiff

Melanie Ogle
In propria persona

Present on Behalf of the Defendant

I N D E X

Page

Trent Woodgeard

Examination by the Court 7

Examination by Defendant 8

THE COURT: Mrs. Ogle, I know that I had the bailiff hand you a waiver of counsel and it's my understanding you do not want to sign that?

DEFENDANT: I do not waive the right to counsel.

THE COURT: You filed a notice of pro se appearance September 21st and the first paragraph is Defendant Melanie Ogle by and for herself and knowingly, intelligently, voluntarily waives her right to counsel to represent herself in this case at this time or until subsequent notice for the following reasons. So you have waived your right to counsel on September 21st. I don't understand why you don't want to sign the written waiver of counsel.

DEFENDANT: Did you miss the part where it said until subsequent notice. This would be subsequent notice.

THE COURT: Okay, notice of what?

DEFENDANT: I don't waive my right to counsel.

THE COURT: Okay. Have you tried to retain counsel?

DEFENDANT: I have an inability to obtain counsel.

THE COURT: Okay, are you requesting the Court appoint counsel for you?

DEFENDANT: I have an inability to obtain counsel.

THE COURT: Okay. Now, let me ask the question again because the fact that you have the inability to pay for counsel doesn't mean that you want counsel and I'm asking you, do you want the Court to appoint counsel for you? Is that what you are asking?

DEFENDANT: I have an inability to obtain counsel.

THE COURT: Okay.

DEFENDANT: And I do not waive my right to counsel.

THE COURT: Okay, what I'm going to do at this point and I'm just going to ask you and you can answer it any way you want to. You have a right to be represented by counsel in the sentencing hearing. If you cannot afford counsel, the Court would appoint counsel for you. If you want to represent yourself as you have told me in writing that you knowingly, voluntarily waive your right to counsel, you may proceed without counsel. If you want the Court to appoint counsel, I will

appoint counsel for you at no expense assuming that I can determine that you have the inability to pay. So do you want the Court to appoint counsel?

DEFENDANT: I do not waive my right to counsel and I have an inability to obtain counsel.

THE COURT: Okay. Well, I can't ask it any clearer so I will take your notice of pro se appearance as a voluntarily waiver of your right to counsel at this point in time because you have not requested the Court appoint counsel on your behalf.

DEFENDANT: I do not waive my right to counsel --

THE COURT: Okay.

DEFENDANT: -- on the record.

THE COURT: That's fine. I've asked you if you want the Court to appoint counsel and you did not answer me that you want the Court to appoint counsel so --

I have received a request for restitution in the amount of $792.65. I have received a letter from Dr. Sawyer and I'm kind of confused about the way the letter is phrased. I don't have any evidence at this point in time including this letter that I could take as testimony or evidence that the expenses that were incurred by Deputy

Woodgeard was a direct and proximate result of the incident that took place in September, 2009.

Do you have any further testimony with respect to that matter?

MR. GLEESON: That's why the deputy is here. If that's required, he can testify as to his expenses and why he incurred them.

THE COURT: Okay, and let's go ahead and do that.

TRENT WOODGEARD, called as a witness, being first duly sworn, testified as follows:

THE COURT: I have received this letter from Dr. Sawyer. I have also received that document.

Would you do me a favor and show that to Mrs. Ogle and also the letter from the doctor?

Why don't you identify what the second document is?

MR. WOODGEARD: It's the payments of what my insurance covered and what they didn't covered. I actually paid out $792.65.

THE COURT: Okay, after the incident, what did you do?

If you want to ask questions fine, or I can ask the questions. It doesn't make any difference, but --

MR. GLEESON: That's fine, Your Honor. If you want to keep going, that's fine.

THE COURT: But after the incident, what did you do? Did you go to the hospital or did you not go to the hospital.

MR. WOODGEARD: I went to the ER room.

THE COURT: Okay. Why don't you tell me medically what happened after that?

MR. WOODGEARD: Medically I went to ER. They admitted me, did the CT scan, found out I had a abscess. I was in the hospital for two nights. The second night I had surgery, the abscess drainage. I was off work for a month.

THE COURT: Okay, what were your medical bills as a result of the --

MR. WOODGEARD: Together it was $7,492. What I had to pay out of my own pocket was $792 that insurance didn't cover.

THE COURT: All right, anything else?

MR. GLEESON: No, thank you.

THE COURT: Ms. Ogle, do you have any questions of the officer with respect to the

medical bills?

DEFENDANT: Medical bills have nothing to do with me.

THE COURT: Okay, you don't have any questions then?

DEFENDANT: He had a pre-existing condition; did you not?

MR. WOODGEARD: No.

THE COURT: Okay, you may step down. Thank you.

Now for purposes of the record, I have received a presentence investigation. I have made the presentence investigation available to the State of Ohio and to Mrs. Ogle. Have you had the opportunity to review the presentence investigation?

DEFENDANT: I will reiterate that I have not waived my right to counsel in this matter.

THE COURT: Have you had the opportunity to review the presentence investigation?

DEFENDANT: How would I have received that?

THE COURT: I had somebody hand it to you while you were out in the hall today.

DEFENDANT: Oh, the presentence investigation.

Again, I have not waived my right to counsel.

THE COURT: All right.

DEFENDANT: Does the Court understand what that means?

THE COURT: Yes, I understand what it means, but I can't do anything about that unless you tell me what you want me to do. I asked you if you want me to appoint counsel and you wouldn't answer that question so I --

DEFENDANT: I did answer the question. I said I have an inability to obtain counsel and I said I have -- I do not waive my right to counsel.

THE COURT: I understand that.

DEFENDANT: Okay. So this proceeding is in violation of my Sixth and Fourteenth Amendment Rights to the Constitution of the United States of America.

THE COURT: Well, as I said, I could have ten different hearings, Mrs. Ogle, with you, and you could say the same thing, I haven't waived my right to counsel and then I don't know what I am supposed to do. I can't force counsel upon you. I have asked you if you want the Court to appoint counsel since you can't afford one. You won't answer yes under that question so I am going to

proceed with sentencing.

Now as I said for purposes of the record, I have given both sides the copy of the presentence investigation.

Is there any other comments from the State of Ohio? I have received a copy of the state's recommendation. Do we have any other comments for purposes of sentencing?

MR. GLEESON: Your Honor, I appreciate the opportunity, however, I have set forth the recommendation in writing and would just simply rest upon that.

THE COURT: Okay.

MR. GLEESON: I do think that a prison sanction is appropriate in this case because otherwise it would demean the seriousness of the offense. I think that's important for the principles and purposes of sentencing due to principles of punishment of the offender, as well as the deterrent effect not only for Mrs. Ogle, but for other members in the community and I do think that those principles and purposes of sentencing in this particular case because there was an assault on a peace officer are important enough to merit a prison sanction.

THE COURT: Thank you.

MR. GLEESON: Thank you.

THE COURT: Deputy Woodgeard, you know, I'll give you the opportunity to make any comments you'd like to make.

DEPUTY WOODGEARD: I have no comments.

THE COURT: Mrs. Ogle, are there any comments you have, anything you want to say for purpose of sentencing?

DEFENDANT: I do not waive my right to counsel.

THE COURT: Okay, for purposes of sentencing, however, is there anything you want to say because you have the opportunity to make any comments you'd like to make.

DEFENDANT: I do not waive my right to counsel.

THE COURT: All right. Well, for whatever reason that makes sense I believe only to you, you harbor great resentment toward all people in authority, whether it be the deputy sheriff involved in this case, whether it be me, or any other elected officials in Hocking County.

You don't believe the law applies to you. The only law that you recognize is what I call

Melanie's law. Melanie's law believes that all the people that testified in this courtroom perjured themselves. Melanie's law believes that she has the right to assault a police officer who was in the performance of his duty.

As I told the jury in this case and as I wrote in my decision denying your motion for new trial, the law in the State of Ohio is not the way you perceive it to be. The law in the State of Ohio is you do not have the authority to assault a police officer who is in the performance of his duty absent excessive force.

You know, we are a country of laws and not of men and clearly you do not subscribe to that principle, nor do you accept it. You believe that you did nothing wrong in this case and that --

DEFENDANT: No, sir. No, sir. That's not true.

THE COURT: All right. Well, I gave you --

DEFENDANT: I know I did nothing wrong.

THE COURT: I gave you the --

DEFENDANT: And I do not waive the right to counsel.

THE COURT: I gave you the opportunity to make any comment you'd like to make for purposes of

sentencing so --

DEFENDANT: I do not waive the right to counsel.

THE COURT: So, Mrs. Ogle, why don't you give me the same respect I gave you and let me make my comments which I am required to make under the law of the State of Ohio, and then after I'm completed if you want to --

DEFENDANT: No, sir, you do not have a right under the laws of the State of Ohio to tell me what I believe and what I don't believe.

I do not waive my right to counsel. This hearing is being held in violation of my Sixth and Fourteen Amendment Rights to the United States Constitution.

THE COURT: As I was saying before that, clearly you show absolutely no remorse under these circumstances.

DEFENDANT: I can't be remorseful for something I did not do.

THE COURT: I find that your actions are serious.

However, I will also make a finding that I believe to some extent the actions of Deputy Woodgeard somewhat provoked your actions and quite

frankly if he had walked away from in front of your house, probably this would never have happened. He was not required to do so, but I do believe that when we are balancing some of the seriousness factors, that is a factor I have taken into consideration.

DEFENDANT: You were not there. You don't know anything.

THE COURT: You have a spotless criminal record throughout your years and that's obviously a factor that I should take into consideration.

As I said before, I don't know what brought all of this on. I don't know what brought your resentment on. I believe that somehow you've gone astray with respect to a lot of this stuff and you don't understand that we are country of laws and not of --

DEFENDANT: Yes, we are, sir.

THE COURT: -- men.

DEFENDANT: And I do not waive my right to counsel. This hearing is being held in violation of my Sixth and Fourteenth Amendment Rights to the Constitution of the United States. I cannot make that any more clear, I do not have the ability to obtain counsel.

THE COURT: Okay, well, based upon your record in the past, I don't think it's appropriate at this point in time for me to impose a prison sentence. However, to give you straight community control under these circumstances would demean the seriousness of your conduct and would not adequately protect the public from future crime.

What I'm going to do is impose a sentence of six months in a county jail that is not run or enforced by our local sheriff and I understand that our local jail is not run by the sheriff, but I'm going to deal with that and find out if that's true.

I'm going to impose a $2,500.00 fine. I'm going to order restitution in the amount of $792.65, and you are to pay all court costs that were involved in this case.

You are going to be on a period of community control after you are released from the county jail for a period of three years and I can assure you if you commit any offenses while you are on community control or you violate any conditions of community control, you are going to serve a prison term of one year.

I'm going to put off enforcement of this

sentence for a period of thirty days. The enforcement will be October 27th at 9:00. I will notify you in writing where you are to report.

In the meantime, you are going to be on this same recognizance bond that I have had with house arrest as a condition of the recognizance bond and as I told you, if you violate any conditions of that recognizance bond, separate criminal charges will be filed against you.

Now you have a right to appeal this conviction. You have a right to have a timely notice of appeal filed on your behalf. You have advised me that you are unable to provide for counsel and if you want counsel appointed for you for purposes of perfecting an appeal, the Court will appoint counsel for you. You also have the right to have the necessary documentation provided for you for purposes of perfecting the appeal at no cost if you are unable to.

You have to notify me in writing if you would like the Court to appoint counsel for you. You have thirty days in which to appeal the conviction so make sure you advise me as quickly as possible in writing that you would like the Court to appoint counsel for you.

Ms. Ogle, any other comments you want? Anything else you want to say?

DEFENDANT: I do not waive my right to counsel. I have an inability to obtain counsel, and this hearing is being held in violation of my Sixth and Fourteenth Amendment Rights to the Constitution of the United States.

THE COURT: All right, anything else you want to say?

Anything else about the sentence? Any other comments?

DEFENDANT: The sentencing in unlawful.

THE COURT: Okay. All right, that will be it.

- - -

CERTIFICATE

I, Ellen S. Riggs, hereby certify that I am the Official Court Reporter, for the Court of Common Pleas, Hocking County, Ohio, General Division, and that I transcribed the digital proceedings of this cause, and that the foregoing constitutes all of the evidence introduced and received at the hearing, and that this is a true transcript of same.

Ellen S. Riggs

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Melanie A. Ogle — PETITIONER
(Your Name)

VS.

Hocking Co Common Pleas Court and Judge Dale A Crawford — RESPONDENT(S)

PROOF OF SERVICE

I, Melanie A Ogle, do swear or declare that on this date, March 11, 2024, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Attorneys Randall L. Lambert & Cassaundra C Sark
215 S. Fourth St, PO Box 725
Ironton, OH 45638

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 11, 2024

Melanie A Ogle
(Signature)

The Supreme Court of Ohio

State ex rel. Melanie A. Ogle	Case No. 2022-1052
v.	RECONSIDERATION ENTRY
Hocking County Common Pleas Court	Hocking County

It is ordered by the court that the motion for reconsideration in this case is denied.

It is further ordered that appellees' motion to set response deadline is denied as moot.

(Hocking County Court of Appeals; No. 20CA9)

Sharon L. Kennedy
Chief Justice

APPENDIX C

The Supreme Court of Ohio

State ex rel. Melanie A. Ogle	Case No. 2022-1052
v.	JUDGMENT ENTRY
Hocking County Common Pleas Court	APPEAL FROM THE COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Hocking 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 Hocking County.

(Hocking County Court of Appeals; No. 20CA9)

Sharon L. Kennedy
Chief Justice

The official case announcement, and opinion if issued, can be found at http://www.supremecourt.ohio.gov/ROD/docs/

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HOCKING COUNTY

State ex rel. Melanie A. Ogle,

Relator,

v.

Hocking County Common Pleas Court, et al.,

Respondents.

Case No. 20CA9

JUDGMENT ENTRY

Per Curiam.

This case is before the Court on remand following the Supreme Court of Ohio's decision affirming this Court's denial of the motion for disqualification of attorney Randall L. Lambert and reversing this Court's dismissal of the prohibition and mandamus claims. For the reasons set forth below we grant Respondents' motion for summary judgment and dismiss Relator's complaint for writs of mandamus and prohibition.

I. PROCEDURAL BACKGROUND

Relator, Melanie A. Ogle, was indicted on one count of assault on a peace officer as a result of events that occurred at her residence on September 9, 2009 with a Hocking County Sheriff's Deputy. *State v. Ogle*, 4th Dist. Hocking No. 11CA29, 2013-Ohio-3420. Ogle was released on a $5,000 recognizance bond and retained two attorneys to represent her at trial. On August 11, 2011, a jury found Ogle guilty of one count of assault on a peace officer in violation of R.C. 2903.13(A), a felony of the fourth degree. At the conclusion of the trial, Judge Dale A. Crawford, sitting by assignment in the Hocking County Common Pleas Court, continued her bond as she awaited sentencing. After trial,

APPENDIX B

Ogle's attorneys filed motions to withdraw as counsel. The motions were granted and Ogle retained two new attorneys to represent her while she awaited sentencing.

Prior to sentencing, it was alleged that Ogle made contact with a juror. The trial court conducted a hearing where Ogle appeared with her retained counsel. Judge Crawford continued the bond, but added a condition that "defendant is to have no contact, direct or indirect, with any juror, witness, lawyer or the Court while on bond" and that "defendant shall be placed on house arrest with electronic monitoring." Shortly after this bond hearing, Ogle's two new attorneys filed motions to withdraw stating, "Melanie Ogle has advised counsel that she no longer desires to have counsel represent her in this matter. On or about 19, September 2011 defendant, Melanie Ogle called and terminated the agreement between counsel and defendant." The trial court granted the motions to withdraw. On September 21, 2011, Ogle filed a "Notice of Pro Se Appearance" in which she stated she "knowingly, intelligently and voluntarily waives her right of counsel to represent herself in this case at this time, or until subsequent notice."

On September 27, 2011, Ogle appeared for sentencing without counsel and asserted that she was revoking her waiver of her right to counsel. When asked by Judge Crawford whether she tried to retain counsel, Ogle responded, "I have an inability to obtain counsel." However, when asked whether she wanted the court to appoint counsel for her, she responded, "I have an inability to obtain counsel." When asked again whether she wanted the court to appoint counsel, Ogle responded, "I do not waive my right to counsel and I have an inability to obtain counsel." At no point did Ogle indicate any reason for her inability to obtain counsel, nor did she indicate that she wanted the court to appoint counsel. She also refused to complete an affidavit of indigency in order to qualify for a

court-appointed attorney. Judge Crawford then proceeded to sentence Ogle to six months in jail, a three-year term of community control, restitution in the amount of $792.65, and a $2,500 fine plus court costs. The judgment entry was journalized on September 28, 2011.

In a consolidated appeal, Ogle appealed various judgment entries of the Hocking County Common Pleas Court (Hocking App. Nos. 11CA29, 11CA32, 12CA2, 12CA11, 12CA12, and 12CA19). The appellate cases stemmed from the initial conviction for assault on a peace officer, and a subsequent case where Ogle was alleged to have damaged the electronic ankle bracelet monitor that had been ordered as a condition of bond pending her sentencing hearing.

In this Court's July 26, 2013 decision, we affirmed the judgment of the trial court. *State v. Ogle*, 4th Dist. Hocking No. 11CA29, 2013-Ohio-3420.

On September 30, 2020, Ogle filed a complaint for writ of mandamus and/or prohibition. Ogle's complaint alleged that Judge Crawford and/or Hocking County Common Pleas Court exceeded their authority and violated Ogle's "constitutional rights to counsel under the Sixth and Fourteenth Amendments and Ohio law during this Court's 'sentencing hearing' on September 27, 2011." Ogle requested "a writ of mandamus and/or prohibition which serves to vacate of record, the unauthorized by law, and therefore, unlawful and void September 28, 2011 JUDGMENT ENTRY OF CONVICTION AND SENTENCE in Hocking County Common Pleas Court Case No. 090CR125 against her, and all other subsequent entries and order filed * * *, and any and all other relief for which Melanie A. Ogle is entitled."

On January 7, 2021 we dismissed Ogle's complaint for writs of mandamus and prohibition and denied her motion to disqualify Attorney Randall L. Lambert. Ogle filed an

appeal of that decision to the Supreme Court of Ohio. On December 21, 2021, the Supreme Court affirmed the denial of the motion for disqualification, but reversed the dismissal of the prohibition and mandamus claims and remanded the case for further proceedings. Subsequently, Respondents filed an answer to the complaint. On March 11, 2022, Ogle filed a motion for judgment on the pleadings. On March 31, 2022, Respondents filed a response opposing Ogle's motion for judgment on the pleadings. Respondents also filed a motion for summary judgment on March 25, 2022. Ogle filed a reply to Respondents' response in opposition to her motion for judgment on the pleadings on April 7, 2022. On May 9, 2022 Ogle filed a response to the motion for summary judgment. On May 18, 2022 Respondents filed a reply in support of the motion for summary judgment.

II. LAW AND ANALYSIS

Ogle argues that her sentence is void because Judge Crawford had no jurisdiction to hold the September 27, 2011 sentencing hearing, because she had not waived her right to counsel. Ogle relies on the United States Supreme Court's decision in *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), to support her assertion that if there is no valid waiver of the right to counsel at trial, then the resulting conviction is void.

On appeal, the Supreme Court of Ohio agreed with Ogle and found that there was "no dispute that Judge Crawford exercised judicial authority" and that "Ogle has stated a colorable claim that Judge Crawford violated her Sixth Amendment rights when he ordered her to not communicate with any lawyer and then sentenced her and that this error rendered the sentencing entry void." *State ex rel. Ogle v. Hocking Cty. Common Pleas Court*, 2021-Ohio-4453, ¶¶ 11,19. The Supreme Court, having found the sentence void,

remanded the case for further proceedings.

Ogle argues that "a void judgment is 'a judgment that has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally.' " *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 33, quoting *Black's Law Dictionary* (8th Ed.2004) page 861. In the Supreme Court's decision remanding this case, the majority stated, "Judge Crawford may (or may not) have a meritorious res judicata defense, but that issue is premature at this stage of the proceedings." *Ogle* at ¶ 19. In their motion for summary judgment Respondents assert Ogle's claims are barred by res judicata.

"The doctrine of res judicata provides that a final judgment rendered on the merits by a court of competent jurisdiction is a complete bar to any subsequent action on the same claim between the same parties or those in privity with them." *State ex rel. Oliver v. Turner*, 153 Ohio St.3d 605, 2018-Ohio-2102, 109 N.E.3d 1204, ¶ 15, citing *State ex rel. Jackson v. Ambrose*, 151 Ohio St.3d 536, 2017-Ohio-8784, 90 N.E.3d 922, ¶ 13.

> Application of res judicata requires four things: "(1) there was a prior valid judgment on the merits; (2) the second action involved the same parties as the first action; (3) the present action raises claims that were or could have been litigated in the prior action; and (4) both actions arise out of the same transaction or occurrence." *Reasoner v. Columbus*, 10th Dist. Franklin No. 04AP-800, 2005-Ohio-468, 2005 WL 289574, ¶ 5.

Brown v. State, 6th Dist. No. L-18-1044, 2019-Ohio-4376, 147 N.E.3d 1194, ¶ 20.

In the case sub judice, Ogle has in fact already presented her arguments regarding 1) the trial court's lack of jurisdiction to sentence her and 2) the violation of her Sixth and Fourteenth Amendment rights to this Court in her initial appeal, *State v. Ogle*, 4th Dist. Hocking No. 11CA29, 2013-Ohio-3420. Two of Ogle's assignments of error read:

I. THE TRIAL COURT ERRED AS A MATTER OF LAW TO COMMENCE SENTENCING FOR WHICH IT HAD NO JURISDICTION.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW TO COMMENCE SENTENCING IN VIOLATION OF APPELLANT'S 6TH AND 14TH AMENDMENT RIGHTS AND CRIMINAL RULE 44.

Id. at ¶ 53. These assignments of error were both overruled. *Id.* at ¶ 58. These assignments of error are the same claims presented in her complaint for a writ of mandamus/prohibition.

Ogle's complaint alleged that Judge Crawford and/or Hocking County Common Pleas Court exceeded their authority and violated Ogle's "constitutional rights to counsel under the Sixth and Fourteenth Amendments and Ohio law during this Court's 'sentencing hearing' on September 27, 2011." In support of her complaint Ogle also alleged the sentencing entry was "unlawful and void" and that Judge Crawford lacked jurisdiction over her. Because there was a prior valid judgment on the merits concerning these issues, the first element of res judicata has been met.

Ogle's complaint for a writ of mandamus/prohibition involves the same parties as her initial appeal. Thus, the second element of res judicata has been met. The present action raises claims that were or could have been litigated in the prior action. Because Ogle could have and *did* raise these issues in her initial appeal, the third element of res judicata has been met. And finally, the fourth element of res judicata has been met as both of the actions arise out of the same transaction or occurrence that was the subject matter of the first action. Thus, we find that Respondents have raised a meritorious res judicata defense.

III. CONCLUSION

Because Ogle's claims are barred by res judicata, she is not entitled to relief in mandamus or prohibition and we must grant Respondents' motion for summary judgment. Ogle's motion for judgment on the pleadings is denied. The complaints for writs of mandamus and prohibition are **DISMISSED. ANY PENDING MOTIONS ARE DENIED AS MOOT. COSTS TO RELATOR. IT IS SO ORDERED.**

FOR THE COURT

Jason P. Smith
Presiding Judge

Peter B. Abele
Judge

Kristy S. Wilkin
Kristy J. Wilkin
Judge

NOTICE

This document constitutes a final judgment entry and the time period for appeal commences from the date of filing with the clerk.

Pursuant to Civ.R. 58(B), the clerk is ORDERED to serve notice of the judgment and its date of entry upon the journal on all parties who are not in default for failure to appear. Within three (3) days after journalization of this entry, the clerk is required to serve notice of the judgment pursuant to Civ.R. 5(B), and shall note the service in the appearance docket.