

STATE OF MICHIGAN
COURT OF APPEALS

In re Matter of Ries.

JAMES RIES,

Petitioner-Appellant,

v

63RD DISTRICT COURT JUDGE,

Respondent-Appellee.

UNPUBLISHED

May 1, 2012

No. 302234

Kent Circuit Court

LC No. 10-012226-AS

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Petitioner appeals by right the Kent Circuit Court's dismissal of his complaints for superintending control over the 63rd District Court. Exactly what transpired below is not entirely made clear by the parties' briefs or by the seemingly incomplete record provided to us,¹ but in

¹ No copy of the district court record or any of the transcripts from that proceeding—not even the sentencing transcript—has been submitted to us. Petitioner's brief is extremely unclear and difficult to follow, and it appears that most of his recited facts are not only merely his personal interpretation of events with little clear support from the record, but are irrelevant to any of the legal issues we can discern him raising. For example, petitioner contends that at the sentencing hearing, he was not told certain critical information about the terms of his probation. Petitioner has the burden of proving entitlement to relief and is required to provide this Court with a complete record, including transcripts of any relevant proceedings, including those in district court. See *People v Coons*, 158 Mich App 735, 740; 405 NW2d 153 (1987). Petitioner might not formally be obligated to provide the transcript of his sentencing pursuant to MCR 7.210(B)(1) because the district court proceedings were technically a different action. However, that does not excuse petitioner, as the appealing party, from providing this Court with a sufficient record upon which to base its decision. Having failed to do so, we will not presume that any irregularities occurred at the sentencing, nor will we simply accept petitioner's unsupported assertions that any improprieties took place. We instead presume that petitioner was present at

general, petitioner seeks to defeat the district court's sentence it imposed on him after his jury convictions for various wetlands offenses. Petitioner seeks to do so by means of the novel argument that the courts may not compel him to sign an order of probation. Petitioner seeks to do so through the mechanism of a writ of superintending control from the circuit court, which declined to issue such writ and dismissed petitioner's complaint. We affirm.

After petitioner's jury conviction, the district court judge sentenced petitioner to probation with a number of conditions, including compliance with a restoration plan set forth by the Department of Natural Resources (DNR). The order of probation contained, in relevant part, standard language found on the standard State Court Administrative Office (SCAO) form order DC 243, "Order of Probation (Misdemeanor)." That language, petitioner's objection to which is the gravamen of the instant action, is placed where the probationer was directed to sign, and recited: "I understand and agree to comply with this order." Petitioner contends that this constitutes a waiver of any appellate rights he might have. After apparently making some efforts to persuade the district court that he should not need to sign,² petitioner filed a complaint for superintending control in the circuit court, essentially seeking an order precluding the district court from compelling him to sign the order of probation. The circuit court dismissed the complaint.

Superintending control may be exercised by a court over an inferior court if the petitioner shows that the respondent failed to perform a clear legal duty and that the petitioner lacks an adequate legal remedy. MCR 3.302; *Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 134; 503 NW2d 885 (1993). The interpretation of a court order is a question of law reviewed de novo. *Augustine v Allstate Ins Co*, 292 Mich App 408, 423; 807 NW2d 77 (2011). The grant or denial of a petition for superintending control is reviewed for an abuse of discretion; a petitioner's failure to establish grounds for granting a writ is a reason within the court's discretion for denying the writ. *The Cadle Co v City of Kentwood*, 285 Mich App 240, 246; 776 NW2d 145 (2009). Whether a party has a clear legal duty and whether a party has a clear legal right are issues of law reviewed de novo. *Tuggle v Dept of State Police*, 269 Mich App 657, 667; 712 NW2d 750 (2005) (discussing the prerequisites for mandamus). It is a long-standing legal axiom that legal rights are intimately related to legal remedies. *Marbury v Madison*, 5 US (1 Cranch) 137, 163; 2 L Ed 60 (1803). Consequently, the existence of a legal remedy is also a question of law reviewed de novo.

Petitioner correctly states that a party who enters into a stipulation cannot then argue on appeal that doing so was an error warranting reversal. See *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001). Petitioner also points out, correctly, that, subject to various procedural niceties, parties have a constitutional right to appeals. Const 1963, Art I, sentencing, represented by counsel, and able to ask for any clarification he deemed necessary at the time.

² We are not in receipt of any order from any court that itself orders petitioner to sign his probation order, nor do we have a copy of any transcript in which any court orally ordered petitioner to sign the probation order. However, it appears that the district court judge has opined that petitioner does need to sign it, which, for the purposes of this appeal, we deem sufficient to make the issue ripe for consideration and not moot.

§ 20; MCR 6.425(F)(1)(a). It stands to reason that no court could legally order a criminal defendant to enter into a stipulation that would abridge that right to appeal, or indeed to engage in any other act or omission that would have the effect of abridging that right to appeal. However, a defendant's signature on an order of probation form, under the language stating that "I understand and agree to comply with this order," does not have any such effect.

An agreement to comply with "*this order*" is not a direct agreement to comply with any specific act or omission except insofar as it is dictated by "*this order*." The order itself could be modified, rescinded, overturned, or otherwise changed in its internal contents. An agreement to comply with "*this order*" would not constitute an ongoing duty to comply with any terms *within* that order if those terms become something else. Furthermore, an order of a court is binding on the subject of that order irrespective of whether the subject agrees to comply therewith. Indeed, such an order must be complied with even if it is clearly incorrect. *Schoensee v Bennett*, 228 Mich App 305, 317; 577 NW2d 915 (1998). The commands to petitioner found in the probation order were therefore binding on him, irrespective of whether he assented or stipulated to them. Nothing in the language to which petitioner objects contains an agreement that the *terms of the order* are correct. Consequently, petitioner brings no further duties upon himself by signing any such order and waives no rights.

The remainder of petitioner's arguments here and in the circuit court pertain to the substance of the order of probation. These matters are not properly before us, because, as the circuit court correctly explained, petitioner may seek relief therefrom in the district court pursuant to the usual motion and appellate practices. In other words, petitioner has an adequate legal remedy, irrespective of whether he signs the order of probation. Consequently, the circuit court properly dismissed his complaint for superintending control.

We finally observe that, contrary to respondent's position, this appeal was not frivolous. We appreciate respondent's frustration with petitioner: petitioner's arguments are at times difficult to follow. We cannot say that it is unreasonable to be concerned about protecting one's rights to seek post-judgment remedies and appeals and will not do so here.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Amy Ronayne Krause