

[Cite as *Turner v. State*, 2010-Ohio-683.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94292

JOHN L. TURNER, JR.

RELATOR

vs.

**STATE OF OHIO,
JUDGE MICHAEL DONNELLY**

RESPONDENT

**JUDGMENT:
WRIT DISMISSED**

Writ of Prohibition

Order No. 430118

RELEASE DATE: February 19, 2010

FOR RELATOR

John L. Turner, Jr., pro se
Inmate No. 0110662
P.O. Box 5600
County Jail
Cleveland, Ohio 44101

ATTORNEY FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶ 1} On November 23, 2009, relator John L. Turner, Jr., filed a complaint for a writ of prohibition against the state of Ohio to prevent his trial from going forward before Judge Michael Donnelly in *State v. Turner*, Cuyahoga County Court of Common Pleas, Case Nos. CR-527609 and CR-529240. Despite no response by respondent, we sua sponte dismiss the writ.

{¶ 2} Initially, we find that Turner's complaint for a writ of prohibition is defective because it is improperly captioned. A complaint for a writ of prohibition must be brought in the name of the state, on relation of the person applying. Turner's failure to properly caption the complaint warrants dismissal. *Maloney v. Court of Common Pleas of Allen Cty.* (1962), 173 Ohio St. 226, 181 N.E.2d 270;

Dunning v. Judge Cleary (Jan. 11, 2001), Cuyahoga App. No. 78763. The caption of the complaint also does not include the addresses of the parties as required by Civ.R. 10(A).

{¶ 3} We also find that Turner failed to comply with Loc.App.R. 45(B)(1)(a), which mandates that the complaint be supported by an affidavit that specifies the details of the claim. The failure to comply with the supporting affidavit provision of Loc.App.R. 45(B)(1)(a) further requires dismissal of the complaint for a writ of prohibition. *State ex rel. Smith v. McMonagle* (July 17, 1996), Cuyahoga App. No. 70899; *State ex rel. Wilson v. Calabrese* (Jan. 18, 1996), Cuyahoga App. No. 70077.

{¶ 4} Despite the aforesaid procedural defects, we additionally find that Turner failed to demonstrate that he is entitled to a writ of prohibition. The principles governing prohibition are well established. In order to be entitled to a writ of prohibition, relator must establish that the respondent is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized by law, and that the denial of the writ will cause injury to relator for which no other adequate remedy in the ordinary course of law exists. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 1997-Ohio-0202, 686 N.E.2d 267; *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160, 540 N.E.2d 239. Furthermore, a writ of prohibition shall be used with great caution and shall not issue in doubtful

cases. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas* (1940), 137 Ohio St. 273, 28 N.E.2d 641.

{¶ 5} With regard to the second and third elements of a prohibition action, the Ohio Supreme Court has stated that if a trial court has general subject-matter jurisdiction over a cause of action, the court has the authority to determine its own jurisdiction and an adequate remedy at law via appeal exists to challenge any adverse decision. *State ex rel. Enyart v. O'Neill*, 71 Ohio St.3d 655, 1995-Ohio-145, 646 N.E.2d 1110; *State ex rel. Pearson v. Moore* (1990), 48 Ohio St.3d 37, 548 N.E.2d 945.

{¶ 6} However, the Supreme Court has also recognized an exception to this general rule. “Where an inferior court patently and unambiguously lacks jurisdiction over the cause * * * prohibition will lie to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions.” *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 1995-Ohio-278, 656 N.E.2d 1288, citing *State ex rel. Lewis v. Moser*, 72 Ohio St.3d 25, 28, 1995-Ohio-148, 647 N.E.2d 155. Thus, if the lower court’s lack of jurisdiction is patent and unambiguous, the availability of an adequate remedy at law is immaterial. *State ex rel. Rogers v. McGee Brown*, 80 Ohio St.3d 408, 1997-Ohio-334, 686 N.E.2d 1126.

{¶ 7} In this matter, we find that Turner failed to establish that Judge Donnelly patently and unambiguously lacks jurisdiction to proceed with Turner’s

trial because there is no evidence to demonstrate that Turner was ever given transactional immunity. See *State ex rel. Koren v. Grogan* (1994), 68 Ohio St.3d 590, 629 N.E.2d 446. Accordingly, Turner has an adequate remedy at law by appealing any subsequent conviction.

{¶ 8} Accordingly, we sua sponte dismiss Turner's request for writ of prohibition. Relator to bear costs. It is further ordered that the clerk shall serve upon all parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ dismissed.

MARY J. BOYLE, JUDGE

COLLEEN CONWAY COONEY, P.J., and
MELODY J. STEWART, J., CONCUR