

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. David A. Peoples, :
Relator, :
v. : No. 19AP-125
Honorable Judge Charles A. Schneider, : (REGULAR CALENDAR)
Respondent. :

D E C I S I O N

Rendered on September 30, 2019

David A. Peoples, pro se.

Ron O'Brien, Prosecuting Attorney, and Bryan B. Lee, for respondent.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

KLATT, P.J.

{¶ 1} Relator, David A. Peoples, commenced this original action in mandamus seeking an order compelling respondent, the Honorable Charles A. Schneider, to provide him with a final appealable order in his underlying criminal case, Franklin C.P. No. 01CR-4150. Respondent has filed a motion to dismiss for failure to state a claim.

{¶ 2} Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate found that this court previously determined in *State v. Peoples*, 10th Dist. No. 14AP-271, 2014-Ohio-5526 (*Peoples II*) that the judgment in relator's criminal case was a final appealable order and

was not void. Based on *Peoples II*, the magistrate determined that the doctrine of res judicata barred relator's claim. Therefore, the magistrate has recommended that we grant respondent's motion to dismiss for failure to state a claim and deny relator's request for a writ of mandamus.

{¶ 3} Relator has filed objections to the magistrate's decision. Essentially, relator asserts that because the weapons under disability count in his criminal case was never adjudicated, the judgment in that case is void and not a final appealable order. That argument is the basis for relator's claim that he is entitled to a writ of mandamus compelling respondent to issue a final appealable order. However, as noted by the magistrate, this court determined in *Peoples II* that the trial court's failure to dispose of the weapons under disability charge did not violate Crim.R. 32(C) and did not result in a void judgment "or affect the finality of [relator's] judgment of conviction." *Id.* at ¶ 10. Because this court has previously determined that relator's judgment of conviction is a final appealable order, res judicata bars relator from bringing this claim again. For this reason, we overrule relator's objections.

{¶ 4} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Therefore, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we grant respondent's motion to dismiss and deny relator's request for a writ of mandamus

*Objections overruled, motion to dismiss granted,
writ of mandamus denied.*

BROWN and NELSON, JJ., concur.

APPENDIX

**IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT**

The State ex rel. David A. Peoples,	:	
	:	
Relator,	:	
	:	
v.	:	No. 19AP-125
	:	
Honorable Judge Charles A. Schneider,	:	(REGULAR CALENDAR)
	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on May 31, 2019

David A. Peoples, pro se.

Ron O'Brien, Prosecuting Attorney, and Bryan B. Lee, for respondent.

**IN MANDAMUS
ON RESPONDENT'S MOTION TO DISMISS**

{¶ 5} Relator, David A. Peoples, has filed this original action requesting this court issue a writ of mandamus ordering respondent, the Honorable Charles A. Schneider, judge of the Franklin County Court of Common Pleas, to provide him with a final appealable order in his underlying criminal case, Franklin C.P. No. 01CR-4150.

Findings of Fact:

{¶ 6} 1. Relator is an inmate currently incarcerated at Northeast Ohio Correctional Center.

{¶ 7} 2. In the underlying criminal case, relator was found guilty of aggravated murder and was sentenced to 25 years for the aggravated murder, plus 6 years for shooting from a motor vehicle, plus 3 years consecutive for the firearms specification.

{¶ 8} 3. Relator appealed his conviction and sentence to this court. *State v. Peoples*, 10th Dist. No. 02AP-945, 2003-Ohio-4680 ("*Peoples I*"). This court affirmed. In his appeal to this court, relator did not raise the omission of the weapon while under disability ("WUD") charge as an assignment of error.

{¶ 9} 4. Twelve years later, on February 24, 2014, relator filed in the common pleas court the "Motion to Find Judgment Entry Void." In that motion, relator argued that the judgment of conviction and sentence is void because it did not dispose of the WUD charge. The state conceded that the judgment entry is silent as to the WUD charge, but argued that such omission does not create a void judgment.

{¶ 10} 5. On March 19, 2014, the trial court issued a decision and entry denying relator's February 24, 2014 motion. Treating the motion as a petition for post-conviction relief, the trial court found it to be untimely. Also, the trial court found that the untimely petition did not satisfy the conditions set forth in R.C. 2953.23(A).

{¶ 11} 6. Relator appealed to this court the denial of his February 24, 2014 motion or petition.

{¶ 12} 7. On December 16, 2014, this court issued its decision affirming the judgment of the trial court. *State v. Peoples*, 10th Dist. No. 14AP-271, 2014-Ohio-5526 ("*Peoples II*").

{¶ 13} 8. In *Peoples II*, this court held that the trial court's denial of relator's February 24, 2014 motion to find the judgment entry void was proper because the trial court had jurisdiction to sentence him and its judgment of conviction satisfied Crim.R. 32(C). Furthermore, this court held that res judicata barred relator from raising the claim regarding the WUD charge because relator could have raised it in his direct appeal of his conviction.

{¶ 14} 9. On December 17, 2014, this court entered its judgment entry in *Peoples II*.

{¶ 15} 10. On August 10, 2015, relator sought a writ ordering the common pleas court to vacate the judgment entry of conviction and sentence that was filed in the common pleas court on August 2, 2002 in case number 01CR-07-4150.

{¶ 16} 11. In a decision rendered August 2, 2016, this court affirmed the decision of its magistrate and granted summary judgment in favor of respondent. Specifically, with regard to the issue currently before this court, this court stated:

[W]e have already found that the trial court issued a final appealable order in compliance with Crim.R. 32(C), and that res judicata bars his claims. In *Peoples II* at ¶ 9-10 we stated that:

First, noncompliance with Crim.R. 32(C) does not render a judgment of conviction void. *State v. Pointer*, 2d Dist. No. 24446, 2011-Ohio-5072, ¶ 22; *State v. Staffrey*, 7th Dist. No. 2011-Ohio-5760, ¶ 27-29. Neither would it deprive the trial court of subject-matter jurisdiction. *State v. Ervin*, 8th Dist. No. 100366, 2014-Ohio-1631, ¶ 13. This is so because the rule addresses the finality, not the validity, of the judgment of conviction. *Id.* Accordingly, res judicata bars appellant from raising this claim because he could have raised it in his direct appeal of his conviction. *State v. Alexander*, 5th Dist. No. 2014CA00014, 2014-Ohio-2294, ¶ 15-16 (rejecting same argument on res judicata grounds).

Moreover, Crim.R. 32(C) " 'requires a full resolution of those counts for which there were convictions. It does not require a reiteration of those counts and specifications for which there were no convictions, but were resolved in other ways, such as dismissals, nolle counts, or not guilty findings.' " *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, 127 Ohio St.3d 29, 2010-Ohio-4728, ¶ 2, 936 N.E.2d 41, quoting *State ex rel. Davis v. Cuyahoga Cty. Court of Common Pleas*, 8th Dist. No. 93814, 2010-Ohio-1066, ¶ 8. Thus, because appellant was not convicted of the WUD charge, the trial court's failure to indicate the disposition of the WUD charge did not violate Crim.R. 32(C) or affect the finality of appellant's judgment of conviction. *State v. Priest*, 2d Dist. No. 25896, 2014-Ohio-3843, ¶ 13; *State v. Moore*, 7th Dist. No. 12 MA 197, 2013-Ohio-4000, ¶ 47.

State ex rel. Peoples v. Johnson, 10th Dist. No. 15AP-765, 2016-Ohio-5204, ¶ 6.

{¶ 17} 12. On March 1, 2019, relator filed the instant mandamus action again asserting that respondent has failed to provide him with a final appealable order.

{¶ 18} 13. On March 19, 2019, respondent filed a motion to dismiss.

{¶ 19} 14. On April 1, 2019, relator filed a brief in opposition to respondent's motion to dismiss.

{¶ 20} 15. On April 11, 2019, respondent filed a reply to relator's brief in opposition.

{¶ 21} 16. The matter is currently before the magistrate on respondent's motion to dismiss.

Conclusions of Law:

{¶ 22} For the reasons that follow, it is this magistrate's decision that this court should grant respondent's motion and dismiss relator's complaint.

{¶ 23} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28 (1983).

{¶ 24} A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545 (1992). In reviewing the complaint, the court must take all the material allegations as admitted and construe all reasonable inferences in favor of the nonmoving party. *Id.*

{¶ 25} In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that relator can prove no set of facts entitling him to recovery. *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242 (1975). As such, a complaint for writ of mandamus is not subject to dismissal under Civ.R. 12(B)(6) if the complaint alleges the existence of a legal duty by the respondent and the lack of an adequate remedy at law for relator with sufficient particularity to put the respondent on notice of the substance of the claim being asserted against it, and it appears that relator might prove some set of facts entitling him to relief. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.*, 72 Ohio St.3d 94 (1995). For the following reasons, respondent's motion should be granted and relator's complaint should be dismissed.

{¶ 26} This court has already found that the trial court issued a final appealable order and that *res judicata* bars relator's claims in *Peoples II*. Because relator could have

raised these claims in his direct appeal, he cannot establish a right to a writ of mandamus. As such, judgment in favor of respondent is appropriate.

{¶ 27} Based on the foregoing, it is this magistrate's decision that this court should grant respondent's motion and dismiss relator's complaint. Furthermore, inasmuch as relator did not prevail, this court should order the Franklin County Clerk of Courts to collect the fees for this action by deducting periodic payments from relator's inmate account.

/S/ MAGISTRATE
STEPHANIE BISCA

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).