IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: FEBRUARY 21, 2013
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2012-SC-000455-MR

CHRISTOPHER A. LASLEY — APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
NO. 2012-CA-000747-OA
JEFFERSON CIRCUIT COURT
NOS. 06-CR-000756; 06-CR-000800; 07-CR-001071

HON. JAMES M. SHAKE (JEFFERSON CIRCUIT COURT JUDGE), ET AL. — APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Christopher A. Lasley, pro se, petitioned the Court of Appeals for a writ of mandamus directing the Jefferson Circuit Court to enter an order re-instating his probation that was revoked due to the presentation of allegedly erroneous evidence. The Court of Appeals denied the petition and Appellant now appeals to this Court as a matter of right, Ky. Const. § 115, CR 76.36(7)(a). Appellant asserts that this Court should grant his writ as a result of (1) ineffective assistance provided by his counsel, (2) his petition for writ of mandamus being denied by the Court of Appeals based upon a procedural default, and (3) numerous instances throughout proceedings that violated his

constitutional rights.[1] For the reasons that follow, we affirm the Court of Appeals' order.

I. BACKGROUND

Appellant was on probation when his probation officer, Christi Thomas, asked him if he had been using any drugs prior to a routine urinalysis test. Thomas informed Appellant that if he would be honest with her, she would deal with him fairly and not revoke his probation. Appellant admitted he had been using cocaine in previous days, and claims that he and Thomas agreed that if he attended Narcotics Anonymous meetings, his probation would not be revoked. Appellant further agreed not to commit any additional violations, but later that year he was arrested on a new charge of second degree assault.

The Jefferson District Court eventually dismissed the assault charges, but before they were dropped the Circuit Court held a preliminary probation revocation hearing. Based upon the positive urinalysis test, Judge James M. Shake found sufficient probable cause that Appellant had violated his probation and revoked his probation. Appellant filed no appeal, however he did file a petition for writ of mandamus asking the Court of Appeals to direct the trial judge to order his probation be reinstated. The Court of Appeals denied the petition by Order entered on July 12, 2012. This appeal followed.

[1] Appellant actually frames these arguments as reversible errors – as if they are part of a direct appeal rather than petition for a writ of mandamus – even discussing their preservation. We will not address whether these constitute reversible error. Appellant is appealing the Court of Appeals' order denying his writ of mandamus and we will address it as such.

II. ANALYSIS

Kentucky case law sets forth two "classes" where a writ may be appropriate: (1) where the lower court is acting outside its jurisdiction, and (2) where the lower court is acting erroneously but within its jurisdiction. *Powell v. Graham*, 185 S.W.3d 624 (Ky. 2006). The standards for granting petitions for writs of prohibition and mandamus are the same. *Mahoney v. McDonald-Burkman*, 320 S.W.3d 75, 77 n.2 (Ky. 2010) (*citing Martin v. Admin. Office of Courts*, 107 S.W.3d 212, 214 (Ky. 2003)). This Court set forth that standard in *Hoskins v. Miracle*:

> A writ . . . *may* be granted upon a showing that (1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and *there exists no adequate remedy by appeal* or otherwise and great injustice and irreparable injury will result if the petition is not granted.

150 S.W.3d 1, 10 (Ky. 2004) (emphasis added). In *Kentucky Employers Mutual Insurance v. Coleman*, we reiterated the long-standing, lofty standards which must be attained before a writ will be granted:

> [T]he writs of prohibition and mandamus are extraordinary in nature, and the courts of this Commonwealth "have always been cautious and conservative both in entertaining petitions for and in granting such relief." *Bender v. Eaton*, 343 S.W.2d 799, 800 (Ky. 1961).
>
> > This careful approach is necessary to prevent short-circuiting normal appeal procedure and to limit so far as possible interference with the proper and efficient operation of our circuit and other courts. If this avenue of relief were open to all who considered themselves aggrieved by an interlocutory court order, we would face an impossible burden of nonappellate matters.

236 S.W.3d 9, 12 (Ky. 2007). This policy is embodied in a simple statement from a recent case: "Extraordinary writs are disfavored . . . ." *Buckley v. Wilson,* 177 S.W.3d 778, 780 (Ky. 2005).

Appellant invokes the second class of writ, alleging that the trial court acted erroneously but within its jurisdiction. Accordingly, he is required to satisfy the threshold inquiry of establishing (1) lack of adequate remedy by appeal or otherwise and (2) that great injustice and irreparable injury will result if his petition is not granted. *The St. Luke Hosps., Inc. v. Kopowski,* 160 S.W.3d 771, 774-75 (Ky. 2005). We review the Court of Appeals' denial of a petition for writ of mandamus for abuse of discretion. *See, e.g., Sowders v. Lewis,* 241 S.W.3d 319, 322 (Ky. 2007) (citation omitted). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire & Rubber Co. v. Thompson,* 11 S.W.3d 575, 581 (Ky. 2000) (*citing Commonwealth v. English,* 993 S.W.2d 941, 945 (Ky. 1999)).

A. Adequate Remedy By Appeal

The first inquiry this Court must address in granting a writ of mandamus is whether the Appellant had an adequate remedy by appeal. Under Kentucky law, mandamus cannot be used as a substitute for an appeal. *National Gypsum Co. v. Corns,* 736 S.W.2d 325, 326 (Ky. 1987) (*citing Merrick v. Smith* 347 S.W.2d 537 (1961)). The Court of Appeals found that Appellant had an adequate remedy by appeal but failed to exercise that right.

Appellant presents to this Court three grounds for which he believes his writ should be granted: (1) ineffective assistance of counsel, (2) his petition for writ of mandamus being denied by the Court of Appeals based upon a procedural default, and (3) numerous instances throughout proceedings that violated his constitutional rights.[2] Those are all issues that could have been addressed on direct appeal. However, Appellant failed to exercise his right to appeal these matters. Thus, we find that Appellant has failed to establish lack of adequate remedy through the normal appeals process and as a result, has failed the first prong of the threshold inquiry.

B. Great Injustice or Irreparable Injury

Given that we have established that the Court of Appeals did not abuse its discretion in denying Appellant's writ of mandamus, we do not need to address whether he suffered great injustice or irreparable injury as is required by the second prong of the initial inquiry.

III. CONCLUSION

We hold that Appellant failed to satisfy the threshold requirement of a lack of adequate remedy by appeal or otherwise necessary for issuance of a writ. The Court of Appeals therefore did not abuse its discretion, and we affirm its judgment.

Minton, C.J., Abramson, Cunningham, Noble, Scott, and Venters, JJ., sitting. All concur.

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[2] As was previously discussed it appears as if Appellant is making arguments of reversible error that would be appropriate on appeal, and not in a petition for writ of mandamus.

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