

[Cite as *State ex rel. Parker v. Russo*, 2018-Ohio-4903.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107686

**STATE OF OHIO, EX REL.
VINCENT A. PARKER**

RELATOR

vs.

JUDGE NANCY M. RUSSO

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Mandamus
Motion No. 521642
Order No. 522356

RELEASE DATE: December 4, 2018

FOR RELATOR

Vincent Parker, pro se
Inmate No. A310623
Trumbull Correctional Institution
P.O. Box 901
Leavittsburg, Ohio 44430

ATTORNEYS FOR RESPONDENT

Michael C. O'Malley
Cuyahoga County Prosecutor
By: James E. Moss
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, SR., J.:

{¶1} Vincent A. Parker has filed a complaint for a writ of mandamus. Parker seeks an order from this court that requires Judge Nancy M. Russo to vacate his plea of guilty to the offense of murder as entered in *State v. Parker*, Cuyahoga C.P. No. CR-95-320034. Parker argues that a nunc pro tunc sentencing judgment entry, journalized on April 30, 2003, was defective. Judge Russo has filed a motion for summary judgment, which we grant based upon the application of the doctrine of res judicata.

{¶2} The Supreme Court of Ohio, in *O'Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59, 2007-Ohio-1102, 862 N.E.2d 803, reaffirmed the application of the doctrine of res judicata and held that:

The doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel. *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 381, 1995 Ohio 331, 653 N.E.2d 226. Claim preclusion prevents subsequent actions, by the same parties or their privies, based upon any claim

arising out of a transaction that was the subject matter of a previous action. *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.* (1998), 81 Ohio St.3d 392, 395, 1998 Ohio 435, 692 N.E.2d 140. Where a claim could have been litigated in the previous suit, claim preclusion also bars subsequent actions on that matter. *Grava*, 73 Ohio St.3d at 382, 653 N.E.2d 226.

Issue preclusion, on the other hand, serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies. *Fort Frye*, 81 Ohio St.3d at 395, 692 N.E.2d 140. Issue preclusion applies even if the causes of action differ. *Id.*

O’Nesti, supra, at ¶ 6.

{¶3} Herein, Parker has already attempted to litigate the claim that Judge Russo improperly issued a nunc pro tunc sentencing journal entry on April 30, 2003, in Cuyahoga C.P. No. CR-95-320034. On January 29, 2018, Parker filed a complaint for a writ of mandamus with the Supreme Court of Ohio in *State ex rel. Parker v. Russo*, Supreme Court of Ohio Case No. 2018-0147. Parker, in the Supreme Court of Ohio, argued the issue of a defective nunc pro tunc sentencing journal entry. On February 9, 2018, Judge Russo filed a motion to dismiss the complaint for a writ of mandamus filed in the Supreme Court of Ohio based upon the argument that:

In his Petition Parker claims that the trial court did not have jurisdiction to issue the sentencing entry nunc pro tunc on April 30, 2003, to correct the previous sentencing entry issued on February 3, 2003, to reflect that Parker plead guilty to murder in violation of R.C. 2903.02 and not to aggravated murder in violation of R.C. 2903.01, because he had filed an appeal of his conviction on March 3, 2003 in *State v. Parker*, Eighth District Court of Appeals No. 82544 that was pending when the trial court issued the nunc pro tunc sentencing entry on April 30, 2003.

However, it is well settled that courts possess the authority to correct errors in judgment entries so that the record speaks the truth. *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, ¶ 18. Nunc pro tunc entries may be used by a court to correct a clerical error, mistake, or omission that is mechanical in nature and apparent on the record and does not involve legal decision or judgment. *Id.*; Crim.R. 36. Clerical mistakes in judgments may be corrected at any time. Crim.R. 36 Nunc pro tunc entries are used to make the record reflect what the court

actually decided and not what the court might or should have decided or what the court intended to decide. *Id.* In addition, a nunc pro tunc entry by its very nature applies retrospectively to the judgment it corrects.

Motion to Dismiss Relator's Petition for Writ of Mandamus filed in Supreme Court of Ohio Case No. 2018-0147, p. 4.

{¶4} On April 25, 2018, the Supreme Court of Ohio, without opinion, granted the motion to dismiss the complaint for a writ of mandamus. *See State ex rel. Parker v. Russo*, 152 Ohio St.3d 1438, 2018-Ohio-1600, 96 N.E.3d 295.

{¶5} The doctrine of res judicata bars Parker from once again raising the issue of a defective nunc pro tunc sentencing journal entry because the issue was previously adjudicated before the Supreme Court of Ohio. In addition, it must be noted that Parker possessed an adequate remedy at law, through an appeal, to raise the issue of a defective nunc pro tunc sentencing journal entry that prevents this court from issuing a writ of mandamus. *State ex rel. Samples v. Heath*, 135 Ohio St.3d 180, 2013-Ohio-66, 985 N.E.2d 457; *State ex rel. Culgan v. Kimbler*, 132 Ohio St.3d 480, 2012-Ohio-3310, 974 N.E.2d 88; *State ex rel. Hudson v. Sutula*, 131 Ohio St.3d 177, 2012-Ohio-554, 962 N.E.2d 798.

{¶6} Accordingly, we grant Judge Russo's motion for summary judgment. Costs to Parker. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶7} Writ denied.

LARRY A. JONES, SR., JUDGE

TIM McCORMACK, P.J., and
ANITA LASTER MAYS, J., CONCUR

