

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, EX REL.,	:	
JAMES LANG,	:	
	:	
Relator,	:	No. 108214
	:	
v.	:	
	:	
THE HONORABLE JUDGE DEBORAH	:	
M. TURNER, ET AL.,	:	
	:	
Respondents.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: WRITS DENIED

DATED: August 28, 2019

Writs of Mandamus and Prohibition
Motion No. 526352
Order No. 530834

Appearances:

James Lang, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and James E. Moss, Assistant Prosecuting Attorney, *for respondent*.

ANITA LASTER MAYS, J.:

{¶ 1} On February 15, 2019, the relator, James Lang, commenced this mandamus and prohibition action against the respondents, Judge Janet Burnside¹ and Judge Joseph Russo, to compel them to vacate or terminate postrelease control sanctions in three underlying cases: *State v. Lang*, Cuyahoga C.P. Nos. CR-07-492958-A, CR-07-500619-A, and CR-08-507719-A. Lang argues that because the postrelease control sanctions were not properly imposed and because he has finished his prison sentence, the controls are void, cannot be reimposed, and must be terminated. On March 7, 2019, the respondent judges, through the Cuyahoga County Prosecutor's office, moved for summary judgment. Lang filed his combined brief in opposition and motion for summary judgment on April 8, 2019. The respondents did not file a reply brief. For the following reasons, this court grants the respondents' motion for summary judgment, denies Lang's dispositive motion, and denies the application for a writ of mandamus or prohibition.

{¶ 2} In Cuyahoga C.P. No. CR-07-492958-A, in January 2008, Lang pled guilty to one count each of drug trafficking and having weapons while under disability. The judge sentenced him to seven years for drug trafficking and four years for the weapons charge. On the same day in CR-07-500619-A, Lang pled guilty to one count of drug trafficking and received an 18-month sentence, and in CR-08-507719-A, Lang again pled guilty to one count of drug trafficking and received an

¹ Judge Deborah Turner succeeded Judge Janet Burnside on the Cuyahoga County Common Pleas Court. Pursuant to Civ.R. 21, the court substitutes Judge Turner as the proper respondent.

eight- year sentence. All the sentences were concurrent and included the following: “Post release control is part of this prison sentence for 3 [5] years for the above felony(s) under R.C. 2967.28.”

{¶ 3} Lang has been released from prison and is now on postrelease control. On July 30, 2018, in all three underlying cases, Lang filed a motion to vacate void postrelease control. In CR-08-507719-A, the judge denied the motion to vacate, but has not issued rulings in the other two cases. A review of the dockets in the underlying cases show that in CR-07-492958-A and CR-07-500619-A, on February 19, 2019, Lang filed motions to terminate void postrelease control; he did not file such a motion in CR-08-507719-A.

{¶ 4} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987). Furthermore, mandamus is not a substitute for appeal. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 295 N.E.2d 659 (1973); *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967), paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerningham v. Gaughan*, 8th Dist. Cuyahoga No. 67787, 1994 Ohio App. LEXIS 6227

(Sept. 26, 1994). Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108; *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.*, 56 Ohio St.3d 33, 564 N.E.2d 86 (1990). Moreover, mandamus is an extraordinary remedy that is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977.)

{¶ 5} The principles governing prohibition are also well established. Its requisites are (1) the respondent against whom it is sought is about to exercise judicial power, (2) the exercise of such power is unauthorized by law, and (3) there is no adequate remedy at law. *State ex rel. Largent v. Fisher*, 43 Ohio St.3d 160, 540 N.E.2d 239 (1989). Furthermore, if a petitioner had an adequate remedy, relief in prohibition is precluded, even if the remedy was not used. *State ex rel. Leshner v. Kainrad*, 65 Ohio St.2d 68, 417 N.E.2d 1382 (1981). Prohibition will not lie unless it clearly appears that the court has no jurisdiction of the cause that it is attempting to adjudicate or the court is about to exceed its jurisdiction. *State ex rel. Ellis v. McCabe*, 138 Ohio St. 417, 35 N.E.2d 571 (1941), paragraph three of the syllabus. “The writ will not issue to prevent an erroneous judgment, or to serve the purpose of appeal, or to correct mistakes of the lower court in deciding questions within its jurisdiction.” *State ex rel. Sparto v. Juvenile Court of Darke Cty.*, 153 Ohio St. 64, 65, 90 N.E.2d 598 (1950). Furthermore, it should be used with great caution and

not issue in a doubtful case. *State ex rel. Merion v. Tuscarawas Cty. Court of Common Pleas*, 137 Ohio St. 273, 28 N.E.2d 641 (1940). Nevertheless, when a court is patently and unambiguously without jurisdiction to act whatsoever, the availability or adequacy of a remedy is immaterial to the issuance of a writ of prohibition. *State ex rel. Tilford v. Crush*, 39 Ohio St.3d 174, 529 N.E.2d 1245 (1988); and *State ex rel. Csank v. Jaffe*, 107 Ohio App.3d 387, 668 N.E.2d 996 (8th Dist.1995). However, absent such a patent and unambiguous lack of jurisdiction, a court having general jurisdiction of the subject matter of an action has authority to determine its own jurisdiction. A party challenging the court's jurisdiction has an adequate remedy at law via an appeal from the court's holding that it has jurisdiction. *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas*, 78 Ohio St.3d 489, 678 N.E.2d 1365 (1997).

{¶ 6} The Supreme Court of Ohio has held that when postrelease control is required but improperly imposed, the sentence relating to postrelease control is void. Thus, the state or the defendant would be entitled to have it correctly imposed at any time before the defendant has finished serving his sentence. If the sentence has been served and postrelease control has not been properly imposed, the state may not impose it on the defendant. *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961; *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568; and *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126, 844 N.E.2d 301.

{¶ 7} In *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, the Supreme Court of Ohio specified what must be included in a sentencing entry to impose postrelease control on an offender when the trial court orally provided all the required advisements at the sentencing hearing. The sentencing entry must include the following: (1) whether postrelease control is discretionary or mandatory, (2) the duration of the postrelease-control period, and (3) a statement to the effect that the Adult Parole Authority will administer the postrelease control pursuant to R.C. 2967.28 and that any violation by the offender of the controls will subject the offender to the consequences set forth in that statute.

{¶ 8} Lang argues that the notification in his sentencing entries — “Post release control is part of this prison sentence for 3 [5] years for the above felony(s) under R.C. 2967.28” — is void because it does not specify whether the period is discretionary or mandatory and because it does not indicate what the consequences of violating postrelease control are. Furthermore, because he has served his prison sentence, the imposition of postrelease control cannot be remedied and he has a right to be released from the void postrelease control. Thus, mandamus will lie to effect the termination of postrelease control. Alternatively, the trial court never had the jurisdiction to impose a void postrelease control sentence and now has lost jurisdiction to impose postrelease control properly. Thus, prohibition will issue to correct the void sentence.

{¶ 9} However, Lang has or had an adequate remedy at law through the filing of a motion to vacate or terminate postrelease control and then, if necessary,

appealing the denial of such a motion. This precludes the issuance of an extraordinary writ. In *State v. Mace*, 8th Dist. Cuyahoga No. 100779, 2014-Ohio-5036, after Mace had finished his prison sentence, he moved the trial court to terminate his postrelease control, because the sentence entry did not properly advise him of postrelease control. After the trial court denied the motion, he appealed. This court ruled that the advisement — “Post release control is part of this prison sentence for the maximum period allowed for the above felony(s) under R.C. 2967.23” — was not sufficient to allow the parole board to impose and enforce postrelease control and because Mace had already served his sentence, the error could not be corrected. Thus, this court remanded the case to the trial court to issue an entry that Mace is not subject to postrelease control.

{¶ 10} Subsequently, this court repeatedly held on appeal that when a trial court failed to set forth the specific consequences for violating postrelease control in a sentencing entry and the defendant completed his sentence, the term of postrelease control was void and should be terminated. *State v. Smith*, 8th Dist. Cuyahoga No. 102650, 2015-Ohio-7898; *State v. Bryant*, 8th Dist. Cuyahoga No. 102650, 2015-Ohio-3678; *discretionary appeal not allowed*, 144 Ohio St.3d 1505, 2016-Ohio-652, 45 N.E.2d 1050; *State v. Martin*, 8th Dist. Cuyahoga No. 102336, 2015-Ohio-2865; and *State v. Love*, 8th Dist. Cuyahoga No. 102058, 2015-Ohio-1461.

{¶ 11} In *State v. Tolbert*, 8th Dist. Cuyahoga No. 105326, 2017-Ohio-9159, this court considered the effect of *Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85

N.E.3d 700, on *Mace*. In *Tolbert*, the sentencing entry read in pertinent part: “Postrelease control is part of this prison sentence for 3 years for the above felony(s) under R.C. 2967.28.” After Tolbert had served his sentence, he moved to vacate the imposition of postrelease control after serving his prison term. The trial court granted the motion, and the state successfully sought leave to appeal. In applying *Grimes*, this court held that the language sufficiently notified him of the mandatory nature of postrelease control, but did not advise him of the consequence of violating postrelease control. Accordingly, this court affirmed the granting of the motion to vacate postrelease control. This court has continued to review these issues on appeal. *State v. Ellis*, 8th Dist. Cuyahoga Nos. 105108 and 105155, 2017-Ohio-7606, and *State v. Ramos*, 8th Dist. Cuyahoga No. 105110, 2017-Ohio-2763. Therefore, there is an adequate remedy at law that precludes an extraordinary writ.

{¶ 12} Accordingly, this court grants the respondents’ motion for summary judgment and denies the application for an extraordinary writ. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 13} Writs denied.

ANITA LASTER MAYS, JUDGE

MARY EILEEN KILBANE, A.J., and
EILEEN T. GALLAGHER, J., CONCUR