[Cite as *State ex rel. Jackson v. Stuard*, 2012-Ohio-4209.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO ex rel. NATHANIEL JACKSON,	:	**PER CURIAM OPINION**
Relator,	:	**CASE NO. 2012-T-0062**
- vs -	:	
JOHN M. STUARD, JUDGE,	:	
Respondent.	:	

Original Action for Writ of Prohibition.

Judgment: Petition dismissed.

Timothy Young, Ohio Public Defender, and *Randall L. Porter*, Assistant State Public Defender, 250 East Broad Street, #1400, Columbus, OH 43215 (For Relator).

John M. Stuard, pro se, Trumbull County Common Pleas Court, 161 High Street, N.W., Warren, OH 44481 (Respondent).

PER CURIAM

{¶1} Pending before this court is relator, Nathaniel Jackson's, "Complaint for Writ of Prohibition," construed as a Petition for Writ of Prohibition, filed on August 1, 2012. Respondent, Judge John Stuard of the Trumbull County Court of Common Pleas, has not filed an Answer or otherwise responded to the filing of Jackson's request for a writ of prohibition. For the following reasons, Jackson's Petition is dismissed.

{¶2} In Jackson's request for a writ of prohibition, he asserts that he seeks to prevent Judge Stuard from conducting a resentencing hearing scheduled for August 14,

2012. He argues that the trial court and Judge Stuard lack jurisdiction to conduct this resentencing because Jackson has two appeals related to this case pending before the Ohio Supreme Court. He asserts that these pending appeals remove the resentencing matter from the trial court's jurisdiction until the appeals are resolved.

{¶3} "The conditions which must exist to support the issuance of a writ of prohibition are: (1) The court or officer against whom it is sought must be about to exercise judicial or quasi-judicial power; (2) the exercise of such power must be unauthorized by law; and (3) it must appear that the refusal of the writ would result in injury for which there is no other adequate remedy in the ordinary course of the law." *State ex rel. McKee v. Cooper*, 40 Ohio St.2d 65, 320 N.E.2d 286 (1974), paragraph one of the syllabus.

{¶4} We note that "[a] court may, sua sponte, dismiss a Petition for Writ of Prohibition where the petition is frivolous and/or the petitioner 'obviously' cannot prevail based on the facts alleged in the petition." *Snype v. State*, 11th Dist. No. 2012-P-0002, 2012-Ohio-1276, ¶ 5, citing *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 160, 656 N.E.2d 1288 (1995).

{¶5} In the present matter, Jackson has requested this court to prohibit the occurrence of a resentencing hearing. "Prohibition is a preventive writ rather than a corrective remedy and is designed to prevent a tribunal from proceeding in a matter which it is not authorized to hear and determine." *State ex rel. Stefanick v. Municipal Court of Marietta*, 21 Ohio St.2d 102, 104, 255 N.E.2d 634 (1970). It cannot be used to review the regularity of an act already performed. *Id.*; *Snype* at ¶ 6 ("[p]rohibition is not an appropriate remedy to review the validity of past judicial actions").

{¶6} In the present matter, the resentencing hearing was set for August 14, 2012, and that date has passed. Generally, the request for a writ of prohibition would be moot, since this court cannot act to prevent an action that has already occurred. Since the date of the hearing has passed, the trial court docket indicates the resentencing has taken place, and Jackson has filed a "Notice of Hearing" with this court indicating that the hearing has been held, there is no judicial power about to be exercised that this court can prevent.

{¶7} However, it has been held that "[w]here there is a total want of jurisdiction on the part of a court, a writ of prohibition will be allowed to arrest the continuing effect of an order" previously issued by the trial court. *State ex rel. Adams v. Gusweiler*, 30 Ohio St.2d 326, 285 N.E.2d 22 (1972), paragraph two of the syllabus; *State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St.3d 245, 248, 594 N.E.2d 616 (1992) (where relator asserted that the respondents "were completely without jurisdiction to act," the Ohio Supreme Court proceeded to review the jurisdictional issues, even though respondents had already exercised the jurisdiction being challenged). As this court has noted in a prior action involving a writ of prohibition, it has "'plenary power, not only to prevent excesses of lower tribunals, but to correct the results thereof and to restore the parties to the same position they occupied before the excesses occurred.'" *State ex rel. Watkins v. Stuard,* 11th Dist. No. 93-T-4934, 1993 Ohio App. LEXIS 5764, *4 (Dec. 3, 1993), citing *Adams* at 330.

{¶8} Therefore, this court must evaluate whether the lower court was completely without jurisdiction to resentence Jackson. In the present matter, Jackson asserts a lack of jurisdiction due to the fact that two appeals are presently pending in

the Ohio Supreme Court. One appeal is related to the denial of a Motion for a New Trial, filed with the Ohio Supreme Court on February 16, 2010, and the other is an appeal from the denial of a Civ.R. 60(B) motion, filed with the Ohio Supreme Court on May 13, 2010.

{¶9} The Ohio Supreme Court has "consistently held that once an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the judgment." *State ex rel. Sullivan v. Ramsey*, 124 Ohio St.3d 355, 2010-Ohio-252, 922 N.E.2d 214, ¶ 17, citing *State ex rel. Rock v. School Emp. Retirement Bd*., 96 Ohio St.3d 206, 2002-Ohio-3957, 772 N.E.2d 1197, ¶ 8.

{¶10} There is no indication that the exercise of jurisdiction in the trial court was inconsistent with the Ohio Supreme Court's jurisdiction in the pending appeals, as they have nothing to do with the sentencing or resentencing of Jackson and their review will not be impacted by the resentencing. Both appeals originate from, and relate to, the issue of whether the trial court erred in adopting judgment entries prepared by the prosecutor in the trial phase and postconviction phase of the proceedings. Regarding the Civ.R. 60(B) Motion, the subject of the motion was whether "the trial court erred in adopting the findings of fact and conclusions of law that were submitted by the state when it ruled on his petition for postconviction relief." *State v. Jackson*, 11th Dist. No. 2008-T-0024, 2010-Ohio-1270, ¶ 30. In addition, as explained in Jackson's Petition, the Motion for a New Trial was based on the argument that "trial prosecutors had drafted for the Trial Judge various documents involving the trial phase proceedings." Moreover, the Supreme Court appeal in that matter stems from this court's dismissal of the appeal

on procedural grounds not related to the merits of the Motion for a New Trial. Based on the review of the subject matter of these pending appeals, there is no indication that the trial court's exercise of jurisdiction in the resentencing would be inconsistent with or undermine the Supreme Court's jurisdiction in the appeals. The lower court did not rule on an issue that is before the Supreme Court in these appeals or that would impact the Supreme Court's ultimate conclusion in the matter. *See State v. Gordon*, 3rd Dist. Nos. 14-98-52 and 14-98-60, 1999 Ohio App. LEXIS 2672, *13-14 (June 17, 1999) (a trial court acted in a matter inconsistent with appellate court when it resentenced defendant while an appeal related to his sentence was pending).

{¶11} Based on the foregoing, there is no support for a conclusion that there was a total or complete lack of jurisdiction for the trial court to resentence Jackson. It would not, therefore, be appropriate to grant a writ of prohibition to revoke the exercise of jurisdiction that has already occurred in holding the resentencing hearing.

{¶12} Moreover, Jackson will have the ability to appeal from the trial court's judgment in resentencing him, providing him an adequate remedy at law. Where an adequate remedy exists at law, a writ of prohibition will not issue. *State ex rel. Corrigan v. Griffin*, 14 Ohio St.3d 26, 27, 470 N.E.2d 894 (1984); *Watkins*, 1993 Ohio App. LEXIS 5764, at *4. In prohibition cases, it has been held that "if the lower court does not patently and unambiguously lack jurisdiction to proceed, * * * a party challenging that jurisdiction has an adequate remedy by appeal." *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 16. Such a holding is applicable to the present case.

{¶13} Therefore, since we find both that there is no showing of a lack of jurisdiction and that Jackson possesses an adequate remedy through an appeal of his sentence, there is no basis for issuing a writ of prohibition. *Watkins* at *4-5, citing *State ex rel. Hill v. Moser*, 1 Ohio St.3d 13, 14, 437 N.E.2d 300 (1982) ("[w]here relator has an adequate remedy at law and respondent had at least basic statutory jurisdiction, a writ of prohibition will not issue"). Jackson, therefore, "obviously" cannot prevail based on the facts alleged.

{¶14} For the foregoing reasons, Jackson's Petition for Writ of Prohibition is dismissed.

TIMOTHY P. CANNON, P.J., DIANE V. GRENDELL, J., MARY JANE TRAPP, J., concur.