

[Cite as *State v. Kiley*, 2015-Ohio-2308.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 14CA010613

Appellee

v.

THOMAS E. KILEY

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 08CR075579

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 15, 2015

CARR, Judge.

{¶1} Appellant, Thomas Kiley, appeals the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} In 2008, Kiley was convicted of rape, kidnapping, and domestic violence. Kiley was sentenced to five years in prison and classified as a Tier III Sex Offender. This Court vacated the trial court's sentencing entry and remanded for a new sentencing hearing due to the fact that Kiley's sentence contained an improper post-release control notification. The trial court conducted a resentencing hearing on remand. Before the new sentencing entry was journalized, Kiley filed a petition for post-conviction relief. The trial court dismissed Kiley's petition and issued the new sentencing entry. On appeal, this Court affirmed Kiley's convictions but remanded the matter for the trial court to consider Kiley's petition for post-conviction relief. *State v. Kiley*, 9th Dist. Lorain No. 10CA009757, 2011-Ohio-1156, ¶ 34. On remand, Kiley filed

an amended petition for post-conviction relief. The trial court denied Kiley's petition. On appeal, this Court affirmed the trial court's judgment. *State v. Kiley*, 9th Dist. Lorain No. 12CA010254, 2013-Ohio-634.

{¶3} On May 28, 2014, upon his release from prison, Kiley filed a motion captioned, "Emergency Motion for Relief from Duties to Register and Report; or Alternatively, Motion for Writ of Mandamus and/or Prohibition." The trial court promptly denied the motion.

{¶4} On appeal, Kiley raises two assignments of error.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED IN DENYING THE RELIEF SOUGHT IN KILEY'S EMERGENCY MOTION FOR RELIEF FROM DUTIES TO REGISTER AND REPORT; OR ALTERNATIVELY, MOTION FOR WRIT OF MANDAMUS AND/OR PROHIBITION AND IN HIS MOTION FOR RECONSIDERATION.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED IN DENYING KILEY DUE PROCESS OF LAW IN FAILING TO NOTIFY HIM IN OPEN COURT OF ANY DUTY TO REPORT, AND, ALTERNATIVELY, [R.C.] 2950.01, ET. SEQ. IS UNCONSTITUTIONAL AS APPLIED TO KILEY, IN THAT ADMINISTRATIVE IMPOSITION OF THE ADDITIONAL PENALTIES THEREIN VIOLATES THE SEPARATION OF POWERS DOCTRINE AND SUBJECTS KILEY TO DOUBLE JEOPARDY.

{¶5} In his May 28, 2014 motion, Kiley indicated that "[u]pon his release from prison, [he] was notified that he was required to register as [a] sex offender and to verify his address every ninety days." Kiley argued that the trial court never properly notified him of his sex offender status upon being convicted and he asked the trial court to immediately relieve him of any reporting requirements imposed upon his release from prison. In the alternative, Kiley asked for "a Writ of Mandamus and/or Prohibition, ordering the State of Ohio and its political

subdivisions to remove the defendant from any and all sex offender rolls, indexes, and websites controlled by the State of Ohio and its political subdivisions, prohibiting the State of Ohio and its political subdivisions from publishing the defendant's identity and whereabouts as a sex offender, and prohibiting the State of Ohio and its political subdivisions from arresting or prosecuting the defendant for failure to register or report as a sex offender.”

{¶6} The trial court did not have authority to entertain the motion Kiley filed in his criminal case. Kiley effectively sought extraordinary relief from the sex offender reporting requirements purportedly imposed upon him at the time he was released from prison. Filing a post-judgment motion in his original criminal case, however, was not the appropriate avenue to seek extraordinary relief. An original action for extraordinary relief must be commenced through the filing of a complaint or petition rather than a motion. *State ex rel. Brantley v. Ghee*, 83 Ohio St.3d 521, 522 (1998), citing *State ex rel. Simms v. Sutula*, 81 Ohio St.3d 110, 111 (1998); *State ex rel. Franks v. Cosgrove*, 135 Ohio St.3d 249, 2013-Ohio-402, ¶ 1. To the extent his true objectives are a declaratory judgment and a prohibitory injunction, that matter would be separate and distinct from a petition for a writ of mandamus and/or prohibition but must also be filed as a separate action. *State ex rel. McGrath v. Ohio Adult Parole. Auth.*, 100 Ohio St.3d 72, 2003-Ohio-5062, ¶ 6-7.¹ Moreover, to the extent that Kiley now asks this Court to review the trial court's actions at the time of his sentencing, those issues could have been raised on direct appeal. As the trial court did not have authority to entertain Kiley's motion, his two assignments of error are overruled.

¹ This Court takes no position as to whether Kiley would be successful in filing a separate action for relief.

III.

{¶7} Kiley's assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

HENSAL, P. J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

NICHOLAS J. SCHEPIS, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.