

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Smith v. Triggs*, Slip Opinion No. 2023-Ohio-3098.]

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SLIP OPINION NO. 2023-OHIO-3098

**THE STATE EX REL. SMITH, APPELLANT, v. TRIGGS, JUDGE, ET AL.,
APPELLEES.**

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may be cited as *State ex rel. Smith v. Triggs*, Slip Opinion No.
2023-Ohio-3098.]**

Prohibition—Appellant had adequate remedy in ordinary course of law, and trial court did not patently and unambiguously lack subject-matter jurisdiction over appellant’s criminal case—Court of appeals’ judgment dismissing appellant’s petition affirmed.

(No. 2022-1632—Submitted May 16, 2023—Decided September 6, 2023.)

APPEAL from the Court of Appeals for Hamilton County, No. C-220498.

Per Curiam.

{¶ 1} Appellant, Maurice Smith, filed a petition for a writ of prohibition in the First District Court of Appeals against appellees, Hamilton County Court of Common Pleas Judges Alan Triggs and Robert Ruehlman and visiting judge Mark

Schweikert (“the judges”). Smith sought a writ of prohibition to vacate his conviction and sentence in a criminal case. The court of appeals granted the judges’ motion to dismiss Smith’s petition. We affirm the First District’s judgment.

FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} In October 2022, Smith filed a petition for a writ of prohibition in the First District. Smith’s petition stated that he was convicted of and sentenced for felony offenses in *State v. Smith*, Hamilton C.P. No. B1506673. He claimed that his criminal case was originally assigned to Judge Ruehlman, who transferred the trial and sentencing proceedings in the case to visiting Judge Schweikert, and that Judge Schweikert then conducted the trial and sentencing. Smith’s petition further alleged that in 2021, he filed a motion to vacate the sentence, arguing that Judge Ruehlman’s transfer violated the Rules of Superintendence for the Courts of Ohio and the trial court’s local rules. According to Smith, Judge Triggs denied Smith’s motion to vacate his sentence.

{¶ 3} Smith’s 2022 petition sought a writ of prohibition to (1) “prohibit and vacate” the transfer of his criminal case from Judge Ruehlman to Judge Schweikert, (2) “prohibit and vacate” the jury trial and sentencing conducted by Judge Schweikert, and (3) “prohibit and vacate” Judge Triggs’s denial of his motion to vacate the sentence.

{¶ 4} The judges filed a motion to dismiss Smith’s petition, which the First District granted. Smith appealed to this court as of right.

ANALYSIS

{¶ 5} To be entitled to a writ of prohibition, Smith must show by clear and convincing evidence that (1) the judges exercised judicial power, (2) the exercise of that power was unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of the law. *See State ex rel. Reynolds v. Kirby*, __ Ohio St.3d __, 2023-Ohio-782, __ N.E.3d __, ¶ 9. If the trial judges patently and unambiguously lacked subject-matter

jurisdiction over his criminal case, Smith need not establish the lack of an adequate remedy. *See Schlegel v. Sweeney*, __ Ohio St.3d __, 2022-Ohio-3841, __ N.E.3d __, ¶ 6. This court will affirm a court of appeals’ dismissal of a writ petition for failure to state a claim upon which relief can be granted “ ‘if, after presuming the truth of all factual allegations of the complaint and making all reasonable inferences in [the relator’s] favor, it appears beyond doubt that he can prove no set of facts entitling him to the requested extraordinary writ of prohibition.’ ” (Brackets added in *Nyamusevya*.) *State ex rel. Nyamusevya v. Hawkins*, 165 Ohio St.3d 22, 2021-Ohio-1122, 175 N.E.3d 495, ¶ 14, quoting *State ex rel. Hemsley v. Unruh*, 128 Ohio St.3d 307, 2011-Ohio-226, 943 N.E.2d 1014, ¶ 8.

{¶ 6} Smith’s petition alleged that his trial and sentencing were unauthorized by law because the transfer of his case from Judge Ruhlman to Judge Schweikert violated the Rules of Superintendence and the local rules of the Hamilton County Court of Common Pleas. Those allegations sufficiently pled that Judge Ruhlman and Judge Schweikert had exercised judicial power and that the exercise of that power was unauthorized by law.

{¶ 7} However, Smith’s petition failed to show that he had no adequate remedy in the ordinary course of the law. Smith could have raised any issue regarding the transfer of his criminal case from Judge Ruhlman to Judge Schweikert in a direct appeal, which constitutes an adequate remedy in the ordinary course of the law. *See State ex rel. Key v. Spicer*, 91 Ohio St.3d 469, 469, 746 N.E.2d 1119 (2001) (a “claim of improper assignment of a judge can generally be adequately raised by way of appeal”); *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 29-30, 451 N.E.2d 225 (1983) (prohibition is not a substitute for an appeal to contest alleged improper assignment of judge).

{¶ 8} Nor can Smith show that the trial court patently and unambiguously lacked subject-matter jurisdiction over his criminal case. The Hamilton County Court of Common Pleas has subject-matter jurisdiction over felony cases, *see Smith*

v. Sheldon, 157 Ohio St.3d 1, 2019-Ohio-1677, 131 N.E.3d 1, ¶ 8, and when we have found that “a court of common pleas patently and unambiguously lacks jurisdiction, it is almost always because a statute explicitly removed that jurisdiction,” *Ohio High School Athletic Assn. v. Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436, ¶ 9. Any procedural irregularity in the transfer of Smith’s case to a visiting judge would at most affect the court’s exercise of jurisdiction over his particular case—it would not result in the court patently and unambiguously losing subject-matter jurisdiction. *See In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, paragraph one of the syllabus (“In a court that possesses subject-matter jurisdiction, procedural irregularities in the transfer of a case to a visiting judge affect the court’s jurisdiction over the particular case and render the judgment voidable, not void”); *see also Key* at 469 (“No patent and unambiguous lack of jurisdiction [was] evident” despite petitioner’s “claim of improper assignment of a judge”).

{¶ 9} Smith also sought a writ of prohibition to “prohibit and vacate” Judge Triggs’s ruling denying Smith’s 2021 motion to vacate his sentence. Smith is not entitled to such a writ. Smith had the opportunity to file a direct appeal from that ruling, *see State ex rel. Williams v. Sutula*, 147 Ohio St.3d 472, 2016-Ohio-7453, 67 N.E.3d 763, ¶ 5, and he does not argue that the trial court lacked subject-matter jurisdiction to issue it.

{¶ 10} Finally, Smith argues as a proposition of law before this court that the First District misapplied the doctrine of res judicata. But the First District did not mention or rely on res judicata in its dismissal of Smith’s petition for a writ of prohibition, and accordingly, we reject this claim.

CONCLUSION

{¶ 11} For the reasons stated above, Smith has not shown by clear and convincing evidence that he is entitled to a writ of prohibition vacating his conviction and sentence or vacating the trial court’s decision denying his motion to

vacate his sentence. Smith had an adequate remedy in the ordinary course of the law, and the trial court did not patently and unambiguously lack subject-matter jurisdiction. We therefore affirm the First District Court of Appeals' dismissal of Smith's petition.

Judgment affirmed.

KENNEDY, C.J., and DEWINE, DONNELLY, STEWART, and BRUNNER, JJ.,
concur.

FISCHER and DETERS, JJ., not participating.

George A. Katchmer, for appellant.

Melissa A. Powers, Hamilton County Prosecuting Attorney, and Philip R.
Cummings, Assistant Prosecuting Attorney, for appellee.
