

IN THE SUPREME COURT OF OHIO

ORIGINAL

SAMUEL FREEMAN  
Relator,

No. 09-1293

v.

Writ of Prohibition

Honorable Judge  
CHARLES SCHNEIDER,  
Respondent.

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RESPONDENT'S MOTION TO DISMISS

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Samuel Freeman,  
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COUNSEL FOR RESPONDENT

FILED  
AUG 07 2009  
CLERK OF COURT  
SUPREME COURT OF OHIO



## MEMORANDUM IN SUPPORT

### **I. Facts**

Relator was tried by a jury before Respondent, the Honorable Charles Schneider of the Franklin County Court of Common Pleas in Criminal Case No. 05CR-11-8030, (*State of Ohio v. Samuel Freeman*) and was convicted of one count of Aggravated Murder with Specification in violation of R.C. 2323.01 and one count of Aggravated Robbery with Specification in violation of R.C. 2911.01. After his conviction, Relator appealed the trial court's decision to the Tenth District Court of Appeals, Case No. 07-AP337. Relator did not attack the jurisdictional authority of the trial court in his appeal. The Court of Appeals overruled Relator's assignments of error and affirmed the judgment of the Franklin County Court of Common Pleas.

Relator filed for post-conviction relief with the Franklin County Court of Common Pleas, at which time Relator argued the trial court lacked subject matter jurisdiction over the criminal proceedings. Respondent, Judge Charles Schneider denied Relator's motion for post conviction relief, noting Plaintiff's subject matter jurisdiction argument was barred by res judicata, as Relator could have, but failed to raise the jurisdictional argument at trial and on appeal. Relator's claim is now before the Supreme Court of Ohio on a Writ of Prohibition. Relator alleges the Franklin County Court of Common Pleas did not have the authority to exercise jurisdiction over Relator in Criminal Case No. 05CR-11-8030, due to a lack of subject matter jurisdiction.

## II. Standard of Review

In considering a motion to dismiss for failure to state a claim, the Court must construe all material allegations in the Complaint and all inferences that may be reasonably drawn there from in favor of the nonmoving party. *Fahnbulleh v. Strahan* (1995), 73 Ohio St.3d 666. In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that plaintiff can prove no set of facts warranting relief. *State ex rel. Jennings v. Nurre* (1995), 72 Ohio St.3d 596; *York v. Ohio State Highway Patrol* (1991), 60 Ohio St.3d 143.

Furthermore, this Court has provided guidelines in determining when the issuance of a writ of prohibition is appropriate:

“In order to be entitled to a writ of prohibition, a relator must establish that (1) the court or officers against whom it is sought are about to exercise judicial power, (2) exercise of judicial power is unauthorized by law, and (3) denial of the writ will cause injury to relator for which no other adequate remedy in the ordinary course of law exists.

*State ex. Rel White v. Junkin* (1997), 80 Ohio St.3d 335, 336, 686 N.E. 3d 267, 268 (citing *State ex. Rel. Jones v. Garfield Hts. Mun. Court* (1997), 77 Ohio St.3d 447, 448, 674 N.E.2d 1381, 1382.)

## III. Law and Argument

Relator is barred from raising and litigating the issue of subject matter jurisdiction in this case. Under the doctrine of res judicata, defendant is barred from “raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at trial, which resulted in the judgment of conviction, or on an appeal from that judgment.” *State v. Perry* (1967), 10 Ohio St. 2d 175, 180, 226 N.E.2d 104, 108.

Relator did not raise the issue of subject matter jurisdiction during his trial or on direct appeal. Relator attempted to argue that the Franklin County Court of Common Pleas lacked subject matter jurisdiction over his criminal trial in a petition for post conviction relief. However, the trial court denied Relator's petition on the ground of res judicata, citing *Perry*. The same should hold true in this case. The Supreme Court's decision in *Perry* clearly prohibits the defendant from arguing that the Franklin County Court of Common Pleas lacked subject matter jurisdiction over the criminal case because Relator failed to articulate this claim at trial and on direct appeal.

Additionally, Relator incorrectly argues that that Franklin County Court of Common Pleas lacked subject matter jurisdiction to hear Relator's criminal case. R.C. 2931.03 states in part,

"The court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas."

"The Ohio Supreme Court has held that R.C. 2931.03 vests the courts of common pleas with jurisdiction over felonies." *State v. Johnson* (June 23, 1998), 10<sup>th</sup> Dist. Nos. 97AP-1218, WL338173 (citing *State ex rel. Cross v. Hoddinott* (1968), 16 Ohio St.2d 163, 243 N.E.2d 59). Furthermore, "[a]bsent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging the court's jurisdiction possesses an adequate remedy by appeal." *State ex. Rel White v. Junkin* (1997), 80 Ohio St.3d 335, 336, 686 N.E. 3d 267, 268 (citing *State ex rel. Enyart v. O'Neill* (1995), 71 Ohio St.3d 655,656, 646 N.E.2d 1110, 1112.

Relator was tried for Aggravated Murder and Aggravated Burglary. Both offenses are felonies and neither crime is a “minor” offense for the purposes of R.C. 2931.03. R.C. 2931.03 clearly confers original jurisdiction of felony criminal cases to the court of common pleas. Therefore, there is no patent ambiguity regarding the Franklin County Court of Common Pleas’ authority to hear Relator’s murder trial. Thus, Relator’s claim that the Franklin County Court of Common Pleas lacked subject matter jurisdiction is without merit.

Moreover, Relator is not entitled to a writ of prohibition in this case because Relator had an adequate remedy by way of appeal. *State ex rel., Olander v. Ohio Environmental Protection Agency* (1989), 45 Ohio St.3d 28. When determining whether to issue a writ of prohibition, the Court must determine that “denial of the writ will cause injury to relator for which no other adequate remedy in the ordinary course of law exists.” *State ex. Rel White v. Junkin* (1997), 80 Ohio St.3d 335, 336, 686 N.E. 3d 267, 268 (citing *State ex. Rel. Jones v. Garfield Hts. Mun. Court* (1997), 77 Ohio St.3d 447, 448, 674 N.E.2d 1381, 1382.) Here, Relator could have raised the subject matter jurisdiction argument on direct appeal. Relator had an adequate remedy at law available to him. He just failed to utilize it. Accordingly, Relator’s request for a writ of prohibition should be denied.

Relator’s Writ of Prohibition is also moot. A writ of prohibition is not necessarily moot when the act a relator seeks to enjoin has occurred before the writ of prohibition can be ruled on. *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 355, 2006-Ohio-5795, 856 N.E.2d 263, 266 (quoting *State v. ex rel. Consumers’ Counsel v. Pub. Util. Comm.*, 102 Ohio St.3d 301, 2004-Ohio-2894, 809 N.E.2d 1146 ¶11). But, where the act a relator seeks to prevent from occurring has already occurred, a writ of prohibition should only be issued

by the court where the lower court patently and unambiguously lacked jurisdiction to proceed. *Id* (citing *State ex rel. Mayer v. Henson*, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223, ¶ 12). Where the lower court patently and unambiguously lacked jurisdiction, a writ of prohibition “will issue to prevent any future unauthorized exercise of jurisdiction and to correct results of prior jurisdictionally unauthorized actions.” *Id*.

Here, Relator’s seeks to prevent the trial court from exercising jurisdiction over his criminal trial. Relator has already been tried in the Franklin County Court of Common Pleas and sentenced to prison. Because the trial court has already performed the act Relator seeks to prevent, a writ of prohibition in this case is appropriate only where the trial court patently and unambiguously lacked jurisdiction to hear Relator’s criminal trial. *Id*. Here, R.C. 2931.03 expressly states courts of common pleas have jurisdiction over criminal cases, with the exception of minor offenses. Because Relator has already been tried before the Franklin County Court of Common Pleas, and because the trial court did not patently or unambiguously lack jurisdiction over Relator’s trial, Relator’s Writ of Prohibition is moot and should be dismissed.

In addition, Relator failed to comply with R.C. 2969.25(A) which provides, in pertinent part, “[a]t the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court.” Compliance with R.C. 2969.25(A) is mandatory and failure to comply with its requirements is grounds for dismissal. *State ex rel. Washington v. Ohio Parole Auth.* (1999), 87 Ohio St. 3d 258, *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421. A review of the Court file

reveals no affidavit that conforms to this statutory requirement. Therefore, this matter should be dismissed.

Finally, Relator also failed to comply with R.C. 2969.25(C) which requires that an inmate provide an affidavit of indigency setting forth the balance in an inmates account at the correction facility as certified by the institutional cashier. Compliance with R.C. 2969.25 is mandatory and failure to comply with its requirements is grounds for dismissal. *State ex rel. Washington v. Ohio Parole Auth.* (1999), 87 Ohio St. 3d 258, *State ex rel. Zanders v. Ohio Parole Bd.* (1998), 82 Ohio St.3d 421. Relator did provide a notarized affidavit of indigency, however, Relator did not provide a statement of his account as certified by the institutional cashier which is expressly required by R.C. 2969.25 (C). Relator failed to satisfy the requirement of R.C. 2969.25(C). This matter should be dismissed.

### **III. Conclusion**

Relator's Writ of Prohibition should be denied for several reasons. First, Relator's argument that the Franklin County Court of Common Pleas lacked subject matter jurisdiction over his murder trial is without merit. Furthermore, the Court should not entertain Relator's subject matter jurisdiction argument on the legal principle of res judicata. Relator is also not entitled to a writ of prohibition because he had an adequate remedy by way of appeal and his Writ of Prohibition is moot. Finally, Relator failed to abide by the requirements R.C. 2969.25(A) and (C) which statutorily requires a dismissal in this case. Relator has failed to state a claim upon which relief can be granted, and his Writ of Prohibition should be dismissed.

Respectfully submitted,

**RON O'BRIEN  
PROSECUTING ATTORNEY  
FRANKLIN COUNTY, OHIO**



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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been forwarded by regular U.S. mail, postage prepaid, to Samuel D. Freeman, pro se, Inmate # 547-229, Lebanon Correctional Institution, P.O. Box 59, Lebanon, Ohio 45036, this 7<sup>th</sup> day of August, 2009.



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