ORIGINAL

IN THE OHIO SUPREME COURT

State ex rel Joseph McGrath, Relator-Appellant, -VS- Judge: Robert McClelland, Respondents-Appellees, et al.	Supreme Court Case No., 12-0737 Eighth Judicial District Court of Appeals Case No., C.A. 097209 Cuyahoga County Court of Common Pleas Case No., CR-388833

***

NOTICE OF APPEAL CONSOLODATED WITH MOTION FOR STAY

FOR THE RESPONDENTS-APPELLEES
William D. Mason Esq.,
Cuyahoga County Prosecutor
1200 Ontario Street
Cleveland, Ohio 44113

FOR THE RELATOR-APPELLANT

Joseph McGrath
2500 South Avon Belden Road
Grafton, Ohio 44044

FILED
APR 26 2012
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL

The Relator-Appellant, Joseph McGrath, propria persona hereby gives his timely Notice of Appeal to the Ohio Supreme Court, pursuant to **S.Ct. R. Prac.,** 2.1 (A), the Ohio and United States Constitutions, from the Eighth Judicial District Court of Appeal's Cuyahoga County, Ohio January 13th, 2012 judgment denying the relator's writ of mandamus and/or prohibition; February 6th, 2012 denial for relief from judgment and April 10th, 2012 second motion for relief from judgment, pursuant to **Ohio Civ. R.** 60 (B).

This is an appeal from an action that originated in the Eighth Judicial District Court of Appeal's Cuyahoga County, Ohio and is an appeal of right.

This appeal raises a substantial Ohio and United States Constitutional question and involves a felony and is of great general or public interest.

A copy of the January 13th, 2012 journal entry and opinion and April 10th, 2012 journal entry are attached hereto, along with other relevant journal entrys. See (Appx., 1, 2).

***

MOTION FOR STAY

The Relator-Appellant, Joseph McGrath has consolodated a motion for Stay of the Eighth Judicial District Court of Appeal's judgment, pursuant to **S.Ct. R. Prac.,** 2.2 (A)(2)(i)(ii), as the lower court was without jurisdiction to make a finding pursuant to Local R. 23 (B) that the relator is a vexatious litigator, as the Eighth District Local Rule 23 (B) is in conflict with R.C. § 2323.52 (B), pursuant to **Cassidy v. Glossip**, (1967) 12 Ohio St.2d 17, 231 N.E. 2d 64, syllabus 3, **Guzinas v. Constantino**, (1988) 43 Ohio App.3d 52, 53, 539 N.E.2d 173 and **GLS Capital Cuyahoga Inc., v. Abuzahrich**, 2006-Ohio-298 (8th, Dist.) at (¶9-10).

Moreover, this action is based on the 7-16-2002 "nunc pro tunc" sentencing journal entry issued in Case CR-388833 out of Cuyahoga County Court of Common

Pleas that does not state the fact of conviction, **Crim. R.** 32 (C), **State v. Lester**, 130 Ohio St.3d 303, 958 N.E.2d 142, syllabus 1; **State ex rel Viceroy v. Strickland Saffold**, 2010-Ohio-5563 (8th Dist) at (¶6).

The "nunc pro tunc" sentencing journal entry issued on 7-16-2002 in Case No., CR-388833 provides the following to wit:

> DUE TO CLERICAL ERROR THE SENTENCE ON THE COURT IS CORRECTED. DEFENDANT IS SENTENCED TO A PRISON TERM AT THE LORAIN CORRECTIONAL INSTITUTION OF 2 YEARS AS TO COUNT 1 AND 6 MONTHS AS TO COUNTS 3 AND 4; AND A JAIL TERM AT COUNTY JAIL OF 6 MONTHS AS TO COUNTS 2, 6 AND 7. SENTENCES IN COUNTS 2, 6 AND 7 ARE TO RUN CONCURRENT TO THE TERMS IMPOSED IN COUNTS 1, 3 AND 4; SENTENCES IMPOSED IN COUNTS 1, 3, AND 4 ARE TO RUN CONSECUTIVE TO ONE ANOTHER. DEFENDANT TO RECEIVE 222 DAYS JAIL TIME CREDIT AS OF JULY 16, 2002. CORRECTED ENTRY NOTES ON... 07-16-02 CHANGED JAIL TIME CREDIT TO READ 222 DAYS...SKM 07/24/02 09:59.

See **(Cuyahoga County Criminal Docket Case CR-388833 at 7-16-2002).**

[N]ot only does the 7-16-2002 "nunc pro tunc" sentencing journal entry fail to comply with **Crim. R.** 32 (C), but the entry fails to mention and/or impose any court costs on any party, pursuant to R.C. § 2949.14, R.C. § 2949. 15 and/or the fact that they were in fact waived, pursuant to R.C. § 2949.091, R.C. § 2949.092, R.C. § 2947.23 (A)(1).

R.C. § 2303.26 outlines the duties of the clerk and the clerk is under a clear legal duty to enter the judgment as ordered by the judge, given that the clerk was without authority to determine the merits of the court's judgments and orders. **State ex rel Bitter v. Missig**, 1994 Ohio App. LEXIS 3597 (6th, Dist)(Mandamus Granted). See also **Hill v. Wampler**, (1936) 298 U.S. 460, 56 S.Ct. 760 syllabus 1, 9.

This is a classic case of "Now we Gotcha."

The Eighth Judicial District's decision is an absurd result and it ignores well established precident. Moreover, the court's decision authorizes the clerk of court's to unlawfully garnish a persons assets when there has been no authorization in a journal entry for any such conduct, in violation of statute.

Even further, the lower court has used the doctrine of res judicata to promote governmental oppression when in fact this court has held that this doctrine is not to be applied so rigidly to work an injustice and/or when it defeats the ends of justice. **State v. Simpkins**, 117 Ohio St.3d 420, 884 N.E. 2d 568 at (¶25).

The judgment in question is void and it's open to collateral attack at any time by any person.

In the interest of justice and for judicial economy and to maintain the status quo during this appeal and to prevent any further injuries by the clerk of the Cuyahoga County Court of Common Pleas the relator-appellant moves the Ohio Supreme Court in accordance with it's inherent powers to do so and powers vested by rule, to issue a Stay of the lower court judgment.

Moreover, the relator-appellant moves this court to further direct the stay of any further collection of court costs in connection with Case CR-388833 as this is unauthorized by law. Missig, supra.

This request for a stay is not being made in bad faith, nor to cause any delay.

Wherefore, the relator-appellant prays the court grants this motion.

Respectfully submitted,

4-23-2012

Joseph McGrath
2500 South Avon Belden Road
Grafton, Ohio 44044

SERVICE

A true copy of the foregoing was sent out today 4-23-2012 by regular U.S. mail to the Cuyahoga County Prosecutor, at 1200 Ontario Street, Cleveland, Ohio 44113.

Respectfully submitted,

Joseph McGrath
2500 South Avon Belden Road
Grafton, Ohio 44044

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97209

STATE, EX REL. JOSEPH MCGRATH

RELATOR

vs.

JUDGE MCCLELLAND, ET AL.

RESPONDENTS

JUDGMENT:
WRIT DENIED

Writ of Mandamus and/or Prohibition
Motion No. 447897
Order No. 451114

RELEASE DATE: January 13, 2012

(APPX 1)

ATTORNEYS FOR RELATOR

Joseph McGrath, Pro Se
No. 570-424
Grafton Correctional Institution
Grafton, Ohio 44044

ATTORNEYS FOR RESPONDENTS

William D. Mason, Esq.
Cuyahoga County Prosecutor
By: James E. Moss, Esq.
Assistant County Prosecutor
9th Floor, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FILED AND JOURNALIZED
PER APP.R. 22(C)

JAN 13 2012

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

JAMES J. SWEENEY, J.:

Joseph McGrath has filed a "complaint for a writ of mandmaus and/or prohibition." Through the complaint for extraordinary relief, McGrath requests: (1) mandamus to compel Judge Robert McClelland to vacate the criminal sentence imposed in *State v. McGrath*, Cuyahoga Cty. Court of Common Pleas Case No. CR-388833 on the basis of the improper imposition of postrelease control; (2) mandamus to compel Judge McClelland to issue a final appealable order that complies with Crim.R. 32(C); (3) mandamus to compel the Cuyahoga Cty. Clerk of Courts to return all monies garnished from McGrath vis-a-vis the order to pay costs as entered in *State v. McGrath*, supra; and (4) prohibition to prevent the Cuyahoga Cty. Clerk of Courts from garnishing any of McGrath's assets. Judge McClelland and the Cuyahoga Cty. Clerk of Courts have filed a joint motion for summary judgment, which we grant for the following reasons. In addition, we grant the request that McGrath be declared a vexatious litigator pursuant to Loc.App.R. 23.

Initially, we find that the doctrine of res judicata prevents McGrath from seeking writs of mandmaus and prohibition. Res judicata bars the litigation of all claims that were litigated or could have been litigated in a prior legal action. *State ex rel. Sneed v. Anderson*, 114 Ohio St.3d 11, 2007-Ohio-2454, 866 N.E.2d 1084 ¶ 9; *State ex rel. Mora v. Wilkinson*, 105 Ohio St.3d 272 , 2005-Ohio-1509,

824 N.E.2d 1000 ¶ 14. McGrath has previously raised the issues of a defective sentence based upon the improper imposition of postrelease control, a final appealable order that complies with Crim.R. 32(C), and the garnishment of assets in order to satisfy the imposition of court costs, through two separate prior actions. In *State ex rel. McGrath v. Matia*, et al., 8th Dist. No. 94147, 2010-Ohio-1987, McGrath sought mandamus to vacate the sentence imposed in *State v. McGrath*, supra, based upon the improper imposition of postrelease control.[1] This court dismissed the complaint for a writ of mandmaus on April 30, 2010, finding that: (1) McGrath failed to establish his claims for relief in mandmaus; (2) McGrath possessed an adequate remedy at law through a direct appeal; (3) McGrath failed to establish his claims for prohibition; and (4) McGrath failed to comply with the mandatary requirements of R.C. 2969.25, which requires an affidavit of prior civil actions.

In addition, McGrath filed a "complaint for an original writ of mandamus and/or prohibition" in the Supreme Court of Ohio. *State ex rel. McGrath v. Gallagher*, et al, Ohio Supreme Court Case No. 10-1830. Once again, McGrath, through the complaint for an extraordinary writ of mandamus and/or

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[1]McGrath named both Judge David T. Matia and Judge Eileen A. Gallagher as respondents. Judge Matia presided over Cuyahoga Cty. Court of Common Pleas Case No. CR-352526 while Judge Gallagher presided over Cuyahoga Cty. Court of Common Pleas Case No. CR-388833.

prohibition, attempted to raise the following issues based upon the claim that postrelease control was improperly imposed at the time of sentencing in CR-388833: (1) sentence was void; and (2) Cuyahoga Cty. Clerk of Courts was improperly garnishing assets vis-a-vis the imposition of court costs. On November 5, 2010, Judge Gallagher and the Cuyahoga Cty. Clerk of Courts filed a joint motion to dismiss, based upon the argument of res judicata. On December 29, 2010, the Supreme Court of Ohio granted the motion to dismiss that was predicated upon the application of the doctrine of res judicata. See *State ex rel. McGrath v. Gallagher, et al,* 127 Ohio St.3d 1483, 2010-Ohio-637, 939 N.E.2d 182.

Once again, the doctrine of res judicata bars the relitigation of the claims or issues that were raised or might have been raised within the two prior original actions as filed by McGrath . *State ex rel. Sneed v. Anderson, supra,* 866 N.E.2d 1084; *State ex rel. Mora v. Wilkinson, supra,* 824 N.E.2d 1000. Specifically, the claims or issues of improper postrelease control, void sentence, and the improper garnishment of assets in order to satisfy the imposition of court costs, in CR-388833, are barred from relitigation by the doctrine of res judicata.

It must also be noted that any claims associated with the imposition of court costs, and the collection of court costs, may not be addressed by way of an

extraordinary writ. McGrath possesses or possessed an adequate remedy at law through a direct appeal. *State ex rel. Whittengerger v. Clarke*, 89 Ohio St.3d 207, 2000-Ohio-136, 729 N.E.2d 756; *State ex rel. Recker v. Putnam Cty. Clerk of Courts*, 87 Ohio St.3d 235, 1999-Ohio-37, 718 N.E.2d 1290; *Hutton v. McMonagle*, 8th Dist. No. 78821, 2001 WL 664139, *1 (June 7, 2001).
wrong State ex rel Bitter v. Missig 1994 Ohio App LEXIS 3597 (6th Dist).

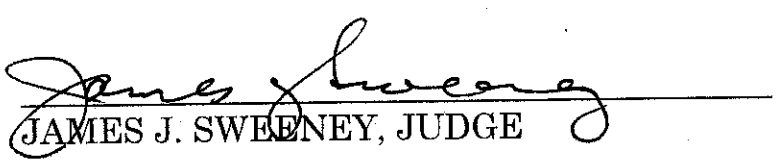
Finally, we must address the request of Judge McClelland and the Cuyahoga Cty. Clerk of Courts to declare McGrath a vexatious litigator. Pursuant to Loc.App.R. 23(A), an original action shall be considered frivolous if it is not reasonably grounded in fact or warranted by existing law. Loc.App.R. 23(B) further provides that a party that habitually, persistently and without reasonable cause engages in frivolous conduct, may be declared a vexatious litigator subject to filing restrictions. In the case sub judice, McGrath previously filed two identical complaints for extraordinary writs of mandamus and prohibition based upon the same facts and issues of a defective sentence, postrelease control, and garnishment of assets in order to pay court costs as ordered in CR-388833. Once again, through the present complaint for writs of mandamus and prohibition, McGrath attempts to argue the identical issues of a defective sentence, postrelease control, and garnishment of assets in order to pay court costs as ordered in CR-388833. We find that McGrath's continued attempt to relitigate the issues of a defective sentence, postrelease control, and

court costs constitutes frivolous conduct pursuant to Loc.App. R. 23(A). It must also be noted that McGrath has continually taxed the limited resources of this court through the filing of 23 appeals and 13 original actions over the past 10 years. See Exhibit "A" as attached to this opinion. Cert. Cassidy v. Glossip 12 Ohio St 3d 17, 231 NE2d 64, syl 3

Thus, we find McGrath to be a vexatious litigator under Loc.App.R. 23. Accordingly, McGrath is prohibited from instituting any future legal proceedings in the Eighth District Court of Appeals without first obtaining leave and is further prohibited from filing any proceedings in the Eighth District Court of Appeals without the filing fee and security for costs required by Loc.App.R. 3(A). Any request to file an appeal or original action shall be submitted to the clerk of this court for the court's review.

Accordingly, we grant the joint motion for summary judgment filed by Judge McClelland and the Cuyahoga Cty. Clerk of Courts. It is further ordered that McGrath be declared a vexatious litigator pursuant to Loc.App.R. 23. Costs to McGrath. A copy of this judgment shall be served upon all parties as required by Civ.R. 58(B).

Writ denied.



JAMES J. SWEENEY, JUDGE

MELODY J. STEWART, P.J., and
KENNETH A. ROCCO, J., CONCUR

Exhibit "A"

1) *State v. McGrath*, Cuyahoga App. No. 77896, filed 4/24/00

2) *State v. McGrath*, Cuyahoga App. No. 79976, filed 7/16/01

3) *State v. McGrath*, Cuyahoga App. No. 80645, filed 12/18/01

4) *State v. McGrath*, Cuyahoga App. No. 80700, filed 1/2/02

5) *Cleveland v. McGrath*, Cuyahoga App. No. 8122, filed 4/29/02

6) *McGrath v. Gallagher*, Cuyahoga App. No. 81241, filed 5/22/02

7) *McGrath v. Cuyahoga Cty. Corrections Center*, Cuyahoga App. No. 81505, filed 7/5/02

8) *State ex rel. McGrath v. Ohio Adult Parole Authority*, et al, Cuyahoga App. No. 82287, filed 1/7/03

9) *State ex rel. McGrath v. Gilligan*, Cuyahoga App. No. 83884, filed 12/4/03

10) *McGrath v. Ohio Adult Parole Authority*, Cuyahoga App. No. 84362, filed 3/19/04

11) *State v. McGrath*, Cuyahoga App. No. 85046, filed 8/3/04

12) *State ex rel. McGrath v. Parma Muni. Court*, Cuyahoga App. No. 85601, filed 11/26/04

13) *State ex rel. McGrath v. McDonnell*, Cuyahoga App. No. 87368, filed 11/23/05

14) *State ex rel. McGrath v. Cuyahoga Cty. Court of Common Pleas*, Cuyahoga App. No. 89924, filed 5/25/07

15) *McGrath v. McFaul*, Cuyahoga App. No. 89956, filed 6/4/07

16) *McGrath v. McFaul*, Cuyahoga App. No. 90043, filed 6/21/07

17) *State v. McGrath*, Cuyahoga App. No. 91192, filed 3/24/08

18) *Parma v. McGrath*, Cuyahoga App. No. 91220, filed 3/26/08

19) *State v. McGrath*, Cuyahoga App. No. 91259, filed 4/8/08

20) *State v. McGrath*, Cuyahoga App. No. 91261, filed 4/8/08

21) *State v. McGrath*, Cuyahoga App. No. 92971, filed 3/12/09

22) *State v. McGrath*, Cuyahoga App. No. 93055, filed 3/27/09

23) *State v. McGrath*, Cuyahoga App. No. 93110, filed 4/7/09

24) *State v. McGrath*, Cuyahoga App. No. 93444, filed 6/11/09

25) *State v. McGrath*, Cuyahoga App. No. 93445, filed 6/11/09

26) *State v. McGrath*, Cuyahoga App. No. 94005, filed 9/28/09

27) *State ex rel. McGrath v. Matia*, Cuyahoga App. No. 94147, filed 10/23/09

28) *State v. McGrath*, Cuyahoga App. No. 94171, filed 10/29/09

29) *State v. McGrath*, Cuyahoga App. No. 94229, filed 11/10/09

30) *State ex rel. McGrath v. McDonnell*, Cuyahoga App. No. 94819, filed 3/15/10

31) *McGrath v. Bassett*, Cuyahoga App. No. 96360, filed 2/1/11

32) *State v. McGrath*, Cuyahoga App. No. 96821, filed 5/20/11

33) *State v. McGrath*, Cuyahoga App. No. 96993, filed 7/1/11

34) *State ex rel. McGrath v. Calabrese*, Cuyahoga App. No. 97082, filed 7/25/11

35) *State v. McGrath*, Cuyahoga App. No. 97207, filed 8/25/11

36) *State ex rel. McGrath v. McClelland*, Cuyahoga App. No. 97209, filed 8/26/11

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

STATE EX REL., JOSEPH MCGRATH

Relator

COA NO.
97209

ORIGINAL ACTION

-vs-

JDG. ROBERT MCCLELLAND, ET AL.

Respondent

MOTION NO. 447193

Date 01/13/12

Journal Entry

Motion by Relator, pro se, for leave to proceed in forma pauperis is granted.

COPIES MAILED TO COUNSEL FOR
ALL PARTIES.-COSTS TAXED

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JAN 13 2012

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY_____ DEP.

Presiding Judge MELODY J. STEWART,
Concurs

Judge KENNETH A. ROCCO, Concurs

Judge JAMES J. SWEENEY

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

STATE EX REL., JOSEPH MCGRATH

Relator

COA NO.
97209

ORIGINAL ACTION

-vs-

JDG. ROBERT MCCLELLAND, ET AL.

Respondent

MOTION NO. 448249

Date 01/13/12

Journal Entry

Relators motion for summary judgment and/or motion to strike is denied.

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JAN 13 2012

GERALDINE E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

Presiding Judge MELODY J. STEWART,
Concurs

Judge KENNETH A. ROCCO, Concurs

Judge JAMES J. SWEENEY

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

STATE EX REL., JOSEPH MCGRATH

Relator

COA NO.
97209

ORIGINAL ACTION

-vs-

JDG. ROBERT MCCLELLAND, ET AL.

Respondent

MOTION NO. 447897

Date 01/13/12

Journal Entry

Motion by Respondents for summary judgment is granted. In addition, Relator has been declared a vexatious litigator pursuant to Loc.App.R. 23. See Journal Entry and Opinion dated January 13, 2012.

FILED AND JOURNALIZED
PER APP.R. 22(C)

JAN 13 2012

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

Presiding Judge MELODY J. STEWART,
Concurs

Judge KENNETH A. ROCCO, Concurs

Judge JAMES J. SWEENEY

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

STATE EX REL., JOSEPH MCGRATH

Relator

COA NO.
97209

ORIGINAL ACTION

-vs-

JDG. ROBERT MCCLELLAND, ET AL.

Respondent

MOTION NO. 451114

Date 01/13/12

Journal Entry

Writ Denied. See Journal Entry and Opinion of same date.

>James J. Sweeney, J., Melody J. Stewart, P.J., and Kenneth A. Rocco, J., Concur.

FILED AND JOURNALIZED
PER APP.R. 22(C)

JAN 13 2012

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

Presiding Judge MELODY J. STEWART,
Concurs

Judge KENNETH A. ROCCO, Concurs

Judge JAMES J. SWEENEY

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

STATE EX REL., JOSEPH MCGRATH

Relator

COA NO.
97209

ORIGINAL ACTION

-vs-

JDG. ROBERT MCCLELLAND, ET AL.

Respondent

MOTION NO. 453503

Date 04/10/12

Journal Entry

Second motion by Relator, pro se, for relief from judgment, instanter, is denied. Once again, the relator fails to state a valid basis for relief from judgment purusant to Civ.R. 60(B).

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CLERK OF THE COURT OF APPEALS
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CA11097209

Presiding Judge MELODY J. STEWART,
Concurs

Judge KENNETH A. ROCCO, Concurs

Judge JAMES J. SWEENEY

VOL 0751 PG 0116

(APPX. 2)