[Cite as *State ex rel. Yeager v. Lake Cty. Court of Common Pleas*, 2023-Ohio-2928.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY

STATE OF OHIO ex rel. ANDRE M. YEAGER, Relator, - vs - THE COURT OF COMMON PLEAS OF LAKE COUNTY, OHIO, et al., Respondents.	**CASE NO. 2023-L-033** Original Action for Writs of Prohibition and Mandamus

P E R C U R I A M
O P I N I O N

Decided: August 21, 2023
Judgment: Petition dismissed

Andre M. Yeager, pro se, PID # A784-808, Richland Correctional Institution, 1001 Olivesburg Road, P.O. Box 8107, Mansfield, OH 44905 (Relator).

Charles E. Coulson, Lake County Prosecutor, and *Kelly A. Echols*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Respondents).

PER CURIAM.

{¶1} Relator, Andre M. Yeager, has filed an original action seeking writs of prohibition and mandamus. Relator contends that respondent, the Honorable Vincent A. Culotta, judge of the Lake County Court of Common Pleas, lacked jurisdiction to preside over his underlying criminal prosecution because he permitted relator to proceed pro se in his defense without obtaining a valid waiver of counsel. Respondents have filed a

motion to dismiss. For the reasons discussed below, relator's petition is dismissed for failure to state a claim upon which relief can be granted.

{¶2} In Lake County Court of Common Pleas Case No. 21CR001041, relator was found guilty, following a trial by jury, of grand theft, breaking and entering, and vandalism. Prior to trial, appellant sought to represent himself and waived his right to counsel. Appellant was ultimately sentenced to 17 months in prison on the grand theft charge; 11 months in prison on the breaking and entering charge; and 11 months in prison on the vandalism charge. On January 10, 2022, the trial court ordered the sentences to be served consecutively for an aggregate term of 39 months' imprisonment. Relator filed an appeal of that judgment. The matter was heard on the parties' briefs and, on July 24, 2023, this court affirmed the trial court's judgment. *See State v. Yeager*, 11th Dist. Lake No. 2022-L-008, 2023-Ohio-2541. One of the primary arguments that this court rejected on appeal was relator's contention that the trial court erred in allowing him to represent himself pro se.

{¶3} On March 14, 2023, relator filed the underlying petition, seeking writs of mandamus and prohibition to vacate his conviction. Although relator's petition is over 170 pages (not including exhibits), his essential foundations for relief allege the trial court lacked jurisdiction to proceed to trial and enter sentence because his waiver of counsel was invalid and the state withheld exculpatory evidence.

{¶4} "A [petition for writ of] mandamus is a civil proceeding, extraordinary in nature since it can only be maintained when there is no other adequate remedy to enforce clear legal rights." *State ex rel. Widmer v. Mohney,* 11th Dist. Geauga No. 2007-G-2776, 2008-Ohio-1028, ¶ 31, citing *State ex rel. Brammer v. Hayes,* 164 Ohio St. 373, 130

N.E.2d 795 (1955). Mandamus is a writ issued to a public officer to perform an act that the law enjoins as a duty resulting from his or her office. R.C. 2731.01. "For a writ of mandamus to issue, [1] the relator must establish a clear legal right to the relief prayed for; [2] the respondent must have a clear legal duty to perform the act; and [3] the relator must have no plain and adequate remedy in the ordinary course of the law." (Citation omitted.) *Widmer* at ¶ 31.

{¶5} Regarding a petition for a writ of prohibition, a relator must demonstrate each of the following three elements to be entitled to relief: (1) the judicial officer or court is about to employ its judicial authority in a pending matter; (2) the intended use of the judicial power is not permitted under the law; and (3) the denial of the writ will cause an injury for which there is no adequate legal remedy. *State ex rel. Feathers v. Hayes,* 11th Dist. Portage No. 2006-P-0092, 2007-Ohio-3852, ¶ 9.

{¶6} If a court patently and unambiguously lacks jurisdiction, a relator need not establish he or she lacks an adequate legal remedy. *State ex rel. Boler v. McCarthy*, --- Ohio St.3d ----, 2023-Ohio-500, --- N.E.3d ----, ¶ 9, citing *State ex rel. Dannaher v. Crawford*, 78 Ohio St.3d 391, 393, 678 N.E.2d 549 (1997) ("where a lower court patently and unambiguously lacks jurisdiction over the cause, prohibition and mandamus will issue to * * * correct the results of prior jurisdictionally unauthorized actions, notwithstanding the availability of appeal").

{¶7} A defendant may move to dismiss a complaint for failure to state a claim upon which relief can be granted, according to Civ.R. 12(B)(6). In order for a court to dismiss a complaint under Civ.R. 12(B)(6), "'* * * it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.'" *Taylor v.*

London, 88 Ohio St.3d 137, 139, 723 N.E.2d 1089 (2000), quoting *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. "'A complaint should not be dismissed for failure to state a claim merely because the allegations do not support the legal theory on which the plaintiff relies. Instead, a trial court must examine the complaint to determine if the allegations provide for relief on any possible theory.'" *Firstmerit Corp. v. Convenient Food Mart, Inc.*, 11th Dist. Lake No. 2001-L-226, 2003-Ohio-1094, (1995) at ¶ 7, quoting *Fahnbulleh v. Strahan*, 73 Ohio St.3d 666, 667, 653 N.E.2d 1186. Thus, "[i]n construing a complaint upon a motion to dismiss for failure to state a claim, we must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party." (Citations omitted.) *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988).

{¶8} Initially, respondents aptly note that relator's petition seeks to invalidate his conviction and, in effect, the relief sought is release from prison. Habeas corpus, however, is the appropriate vehicle where an individual is seeking release from confinement. *State v. Turner*, 11th Dist. Lake No. 2020-L-066, 2020-Ohio-4696, ¶ 3, citing *State ex rel. Nelson v. Griffin*, 103 Ohio St.3d 167, 2004-Ohio-4754, ¶ 5 citing *State ex rel. Akbar-El v. Cuyahoga Cty. Court of Common Pleas*, 94 Ohio St.3d 210, 210-211, 761 N.E.2d 624 (2002). In this respect, relator's dual petition for mandamus and prohibition are improper actions for obtaining the general relief relator seeks.

{¶9} Notwithstanding this point, relator's petition fails on other grounds. In the underlying case, relator was charged in Case No. 21CR001041 in the Lake County Court of Common Pleas with grand theft, breaking and entering, and vandalism. "The court of

common pleas has original jurisdiction of all crimes and offenses * * *" subject to certain exceptions pertaining to minor offenses. R.C. 2931.03. Relator does not allege the trial court did not have jurisdiction over his person or the subject matter. Instead, he claims the trial court lacked jurisdiction to proceed because it allegedly "discharge[ed] his public defender and require[d] him to proceed pro se in violation of his constitutional rights." *See* Petition, ¶ 6. He essentially maintains his waiver of his constitutional right to counsel was not knowing, intelligent, and voluntary. Thus, relator maintains the underlying judgment was void because of the alleged invalid waiver.

{¶10} "A void judgment is rendered by a court without jurisdiction. * * * A voidable judgment is one pronounced by a court with jurisdiction." *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 17. If a judgment is void, "[i]t is a mere nullity and can be disregarded[,]" and "[i]t can be attacked in collateral proceedings." *Id*., citing *Tari v. State*, 117 Ohio St. 481, 494, 159 N.E. 594 (1927).

{¶11} In support of his position, appellant cites the United States Supreme Court's decision in *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). In *Johnson*, the Court determined:

> Since the Sixth Amendment constitutionally entitles one charged with a crime to the assistance of counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty. When this right is properly waived, the assistance of counsel is no longer a necessary element of the court's jurisdiction to proceed to conviction and sentence. If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty. A court's jurisdiction at the hearing of trial may be lost 'in the course of the proceedings' due to failure to complete the court—as the Sixth Amendment

> requires—by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void * * *.

(Footnotes and citations omitted.) *Johnson*, 467-468.

{¶12} Relator's contention hinges upon his claim that the trial court did not obtain a valid waiver of his right to counsel, and thus, the court was without jurisdiction to proceed, and accordingly the judgment is void. We do not agree.

{¶13} Generally, to be valid, a waiver of the right to counsel must be made with an appreciation of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, 2004-Ohio-5471, ¶ 40; *Von Moltke v. Gillies*, 332 U.S. 708, 723, 68 S.Ct. 316, 323, 92 L.Ed. 309 (1948); *State v. Suber*, 154 Ohio App.3d 681, 2003-Ohio-5210, 798 N.E.2d 684, ¶ 15 (10th Dist.). A trial court must make a defendant aware "'of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *State v. Montgomery*, 10th Dist. Franklin No. 02AP-927, 2003-Ohio-2888, ¶ 14, quoting *Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279, 63 S.Ct. 236, 87 L.Ed. 268 (1942).

{¶14} Relator has attached a copy of the transcript of proceedings in which the trial court engaged relator regarding his motion to proceed pro se. It is abundantly clear

from the transcript that the trial court obtained a valid waiver of relator's right to counsel. Moreover, this court recently heard relator's direct appeal of his conviction. In that appeal, this court determined the trial court obtained a valid waiver of relator's constitutional right. *See Yeager*, 2023-Ohio-2541.

{¶15} In that opinion, this court determined the trial court apprised relator of the nature of the charges, the statutory offenses themselves, and the permissible punishments. The trial court also explained, at great length, the perils of representing oneself. Relator expressly stated he understood and demonstrated a clear appreciation of proceeding pro se. Indeed, in the course of the colloquy, relator stated he had legal training as a certified paralegal and had represented himself in three other criminal cases. In those cases, he obtained one acquittal, one hung jury, and was convicted once. Finally, the trial court, on multiple separate occasions asked relator if he was certain he wished to proceed pro se. Each time, relator responded in the affirmative. Given the depth of the inquiry with which the trial court engaged relator, it is inconceivable his waiver was not knowing, intelligent, and voluntary. *Id.* at ¶ 20-32.

{¶16} In light of the foregoing, relator exercised his remedy at law on the matter at issue and this court found his position meritless. In this regard, relator had and exercised an adequate remedy at law. Accordingly, relator cannot establish the necessary elements to move forward in mandamus or prohibition.[1]

1. Ordinarily, the resolution of an issue (such as the matter raised in relator's petition) that has been resolved in prior proceedings operates as res judicata in any future proceedings. Because, however, res judicata is an affirmative defense, requiring reference to matters beyond the face of the petition or complaint, it is improper to utilize the doctrine in the course of a Civ.R. 12(B)(6) analysis. *See e.g. State ex rel. Newell v. Cuyahoga Co. Court of Common Pleas*, 165 Ohio St.3d 341, 2021-Ohio-3662, 179 N.E.3d 84, ¶ 10.

{¶17} And, as noted above, relator attached the transcript of the proceedings to the instant petition. Accordingly, even if the issue was not formerly adjudicated in the course of relator's adequate remedy at law, his argument that the trial court patently and unambiguously lacked jurisdiction is without merit.

{¶18} For the reasons discussed in this opinion, relator's petition for writ of mandamus and/or writ of prohibition is denied. Respondent's motion to dismiss is hereby granted.

JOHN J. EKLUND, P.J., MATT LYNCH, J., EUGENE A. LUCCI, J., concur.