

[Cite as *Moore v. Yost*, 2024-Ohio-4683.]

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF OHIO

JERMELL MOORE,	:	
Plaintiff-Appellant,	:	
v.	:	No. 113669
DAVID YOST, ATTORNEY GENERAL	:	
OF OHIO,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 26, 2024

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-23-980786

Appearances:

Jermell Moore, *pro se*.

Dave Yost, Ohio Attorney General, and Andrew T. Gatti,
Senior Assistant Ohio Attorney General, *for appellee*.

SEAN C. GALLAGHER, J.:

{¶ 1} Jermell Moore appeals the trial court’s decision dismissing his claim to be declared a wrongfully imprisoned individual under R.C. 2743.48. Moore’s civil case stemmed from the reversal of his conviction in Cuyahoga C.P. No. CR-15-

595983-A, in which Moore originally pleaded guilty to sexual battery. *State v. Moore*, 2022-Ohio-522 (8th Dist.). For the following reasons, we affirm.

{¶ 2} In a separate case from 2016, Moore was charged with a third-degree felony involuntary manslaughter, which included attendant firearm specifications and two misdemeanor alcohol violations. *Id.* at ¶ 7. In that case, his DNA was collected, which linked him to a dormant rape case alleged to have occurred in 1995. *Id.* at ¶ 8. The rape allegation had resulted in a “John Doe” indictment being filed on the eve of the expiration of the statute of limitations in 2015. *Id.* In 2018, Moore was ultimately arrested for both offenses, and the cases jointly proceeded. *Id.* at ¶ 9.

{¶ 3} On the day of trial, Moore pleaded guilty to sexual battery, a felony of the third degree, along with resolution of the involuntary manslaughter case. *Id.* at ¶ 10. The trial court imposed a two-year term of imprisonment for both cases, to be served concurrently. After serving the two-year imposed term of imprisonment, Moore filed two delayed appeals, the first of which was summarily denied. In the second delayed appeal, Moore challenged the effectiveness of his trial counsel for failing to preserve a statute-of-limitations argument as to the rape conviction. *See generally id.* That panel vacated his guilty plea to both convictions and remanded the matter for further proceedings. Upon remand, the trial court dismissed the rape allegations as being filed beyond the statute of limitations. Moore once again pleaded guilty to the manslaughter charge.

{¶ 4} Moore then filed the underlying civil action seeking a declaration that he was wrongfully imprisoned, the first step in seeking compensation from the State.

Griffith v. Cleveland, 2010-Ohio-4905, paragraph two of the syllabus. The State filed a motion to dismiss claiming that Moore cannot be declared a “wrongfully imprisoned individual” as that term is statutorily defined. Under R.C. 2743.48(A), a person has the right to pursue compensation only if that individual can satisfy five prerequisites, which include evidence that “the individual was found guilty of, *but did not plead guilty to*, the particular charge or a lesser-included offense” (Emphasis added.) *Id.* Moore originally pleaded guilty to the sexual battery offense at issue, but that conviction was vacated in the direct appeal. According to Moore, vacating the conviction rendered his guilty plea to be a nullity. From that, Moore concludes that he can be deemed a “wrongfully imprisoned individual” because if the guilty plea is a nullity, it never occurred for the purposes of R.C. 2743.48(A).

{¶ 5} Moore bases his entire argument on *State v. Moore*, 2006-Ohio-114, ¶ 23 (4th Dist.), in which the Fourth District concluded that a guilty plea vacated in a direct appeal is void, and thus for the purposes of R.C. 2743.48, the plea never existed and the vacated plea does not preclude an offender from seeking the benefits of the wrongful-imprisonment statute.

{¶ 6} The trial court, at the State’s urging, dismissed the action based on *Dunbar v. State*, a case in which the offender originally pleaded guilty to felony abduction and domestic violence, resulting in a two-year prison sentence, but the plea was ultimately vacated in the direct appeal. *Dunbar v. State*, 2013-Ohio-2163, ¶ 3. The conviction based on a guilty plea was reversed because the trial court inadvertently failed to advise the offender of the possibility that it could deviate from

the agreed sentencing range. *Id.* Upon remand, the offender went to trial on the charges and was found guilty of abduction, resulting in a five-year prison sentence. *Id.* Once again, that conviction was reversed in the direct appeal, but this time based on the sufficiency of the evidence. *Id.* The offender then filed a civil action seeking to declare himself a wrongly imprisoned individual. *Id.* Initially, the panel from this district agreed with the offender and concluded that the original guilty plea was no impediment to being declared a wrongfully imprisoned individual, a conclusion expressly based on the rationale advanced in *Moore*, 2006-Ohio-114 (4th Dist.). *Id.*

{¶ 7} Importantly, the Ohio Supreme Court in *Dunbar* expressly overruled this district’s reliance on *Moore*, which held that a vacated plea is void for the purposes of R.C. 2743.48(A)(2) and a vacated plea does not bar an individual from being declared wrongfully imprisoned. *Id.*; see also *Ballard v. State*, 2012-Ohio-3086 (8th Dist.), *rev’d*, 2013-Ohio-2412; *Mohammad v. State*, 2012-Ohio-5517, ¶ 18 (8th Dist.), *rev’d*, 2013-Ohio-3669. In *Dunbar*, it was concluded that “[b]ased on the plain language of R.C. 2743.48, a person who pled guilty to an offense is not eligible to be declared a ‘wrongfully imprisoned individual’ for that offense, even if the plea is later vacated on appeal.” *Dunbar* at ¶ 21. As a result of that conclusion, the civil case was dismissed. *Id.* The trial court did not err by dismissing the complaint.

{¶ 8} Dismissals under Civ.R. 12 are reviewed de novo. *Weiler v. Technipower Inc.*, 2023-Ohio-465, ¶ 11 (8th Dist.). The defense of failure to state a claim under Civ.R. 12(B)(6) may be made within a motion for judgment on the

pleadings or through a stand-alone motion to dismiss. Civ.R. 12(H). A motion to dismiss for failure to state a claim upon which relief can be granted, whether the defense is advanced through a motion to dismiss or a motion for judgment on the pleadings, is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545 (1992). Appellate courts accept all factual allegations of the complaint as true, and all reasonable inferences must be drawn in favor of the nonmoving party. *Byrd v. Faber*, 57 Ohio St.3d 56 (1991). A complaint “should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975); *Doe v. Greenville City Schools*, 2022-Ohio-4618, ¶ 8. Thus, in reviewing the dismissal of a complaint under Civ.R. 12(B)(6), it must be determined whether the plaintiff alleged “sufficient operative facts to support this claim.” *Tuleta v. Med. Mut. of Ohio*, 2014-Ohio-396, ¶ 36 (8th Dist.).

{¶ 9} In the sole assignment of error presented for our review, Moore claims that “the trial court erred in finding that [he] was not a wrongfully imprisoned individual because [he] originally pleaded guilty to sexual battery.” Moore conceded in his complaint that he pleaded guilty to the sexual battery charge. But regardless, according to him, the Ohio Supreme Court’s *Dunbar* decision is not controlling because the Fourth District’s decision in *Moore* should be applied to declare his guilty plea void — and if void, his plea does not preclude invocation of R.C. 2743.48

under the rationale relied on in *Moore*. There is no merit to this argument. Although the Ohio Supreme Court did not directly review *Moore*, any authority derived from the discussion in *Moore* regarding the effects of a vacated plea have been overruled by implication in *Dunbar* and its progeny. The continued validity of *Moore* on this question must be construed in light of *Dunbar*, *Ballard*, and *Mohammad* — the three cases in which the Ohio Supreme Court concluded that a vacated guilty plea is not an exception to R.C. 2743.48(A).

{¶ 10} The State amply demonstrated that Moore failed to state a claim upon which relief could be granted under Civ.R. 12(B)(6). Moore is unable, by operation of law, to establish that he is a wrongfully imprisoned individual as statutorily defined. Under R.C. 2743.48(A)(2), a person who pleaded guilty to the offense at issue is not eligible to be declared wrongfully imprisoned, even if that plea is later vacated in a direct appeal or postconviction proceedings. *See Dunbar*, 2013-Ohio-2163, at syllabus. Since Moore originally pleaded guilty to the rape offense, he cannot be declared a wrongfully imprisoned individual as a matter of law even though that plea was vacated in the direct appeal.

{¶ 11} And even if *Dunbar* did not directly address *Moore*, both cases presented similar fact patterns, and therefore, *Moore* must be deemed to have been overruled by implication. Like *Dunbar*, the Fourth District was reviewing a situation in which an offender originally pleaded guilty to an offense only to have that conviction vacated in a postconviction proceeding. *Moore* at ¶ 3. At the subsequent trial, the defendant was acquitted of the charges. That differs little from

the facts underlying *Dunbar* where the guilty plea was vacated in the direct appeal for procedural and then sufficiency grounds. There is little distinction between a plea vacated through direct appeal and one vacated through postconviction proceedings. In both situations, the guilty plea is merely voidable; it is not void ab initio.

{¶ 12} *Dunbar* directly addressed this point, highlighting the invalid foundation of *Moore*, and determined that a plea is only void if the trial court acts without subject-matter jurisdiction. *Dunbar* at ¶ 15. Absent the lack of jurisdiction, a guilty plea is merely voidable. *Id.* And if merely voidable, it follows that “[u]nder the plain language of R.C. 2743.48(A)(2), a person who has pled guilty to an offense is not eligible to be declared a wrongfully imprisoned individual” because courts must “presume that . . . the statute itself provides no exception for a person whose guilty plea is vacated on appeal” *Id.* at ¶ 19; *see also Moore v. State*, 2019-Ohio-700, ¶ 20 (8th Dist.) (applying *Dunbar*). According to *Dunbar*, had the legislature intended vacated pleas to be an exception to R.C. 2743.48(A)(2), it would have expressly included that language in the statute. *Id.*, *see also Holcomb v. State*, 2012-Ohio-5869, ¶ 11 (9th Dist.).

{¶ 13} Moore’s sole assignment of error is overruled. As a matter of law, Moore cannot demonstrate that he is a “wrongfully imprisoned individual” as statutorily defined because he originally pleaded guilty to the sexual battery offense. Although that plea was vacated in the direct appeal, R.C. 2743.48(A)(2) precludes Moore from availing himself of the wrongful-imprisonment statute. The subsequent

vacation of the guilty plea is of little consequence and did not render the original guilty plea to be void. The trial court's decision is affirmed.

{¶ 14} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

EMANUELLA D. GROVES, P.J., and
FRANK DANIEL CELEBREZZE, III, J., CONCUR