

[Cite as *Wilson v. Collins*, 2010-Ohio-6538.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Lawrence E. Wilson,	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-511 (C.P.C. No. 09CVH11-16823)
Terry Collins et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on December 30, 2010

Lawrence E. Wilson, pro se.

Richard Cordray, Attorney General, and *Lawrence H. Babich*,
for appellees.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Plaintiff-appellant, Lawrence E. Wilson, appeals from a judgment of the Franklin County Court of Common Pleas granting summary judgment to defendants-appellees, Terry Collins and the Ohio Adult Parole Authority. For the following reasons, we affirm that judgment.

{¶2} In 1997, appellant was found guilty of one count of rape and was sentenced to prison for nine to 25 years. His conviction was affirmed on appeal. *State v. Wilson* (Aug. 7, 1998), 2d Dist. No. 16728. Since then, appellant has been denied parole two

times. Appellant also filed an application for clemency with the Ohio Parole Board. It appears that the application has yet to be ruled upon, although the parole board did make an unfavorable recommendation to the governor's office.

{¶3} After his second parole denial, appellant filed a complaint for declaratory judgment and injunctive relief in the trial court. In the complaint, appellant alleged that the appellees denied him meaningful parole consideration and failed to handle his application for clemency as required by R.C. 2967.07.

{¶4} Appellees moved for summary judgment, arguing that they were entitled to judgment as a matter of law on both of appellant's claims. Specifically, appellees alleged that appellant received meaningful parole consideration and that appellees fully complied with the statutory requirements in addressing appellant's application for clemency. The trial court agreed and granted summary judgment to appellees.

{¶5} Appellant appeals and assigns the following error:

THE ADULT PAROLE AUTHORITIES COULD NOT PROVIDE MEANINGFUL CONSIDERATION FOR PAROLE BASED UPON AN INVALID SENTENCING ENTRY, THUS, IT WAS AN ABUSE OF DISCRETION FOR THE COURT TO GRANT SUMMARY JUDGMENT TO THE DEFENDANT'S [SIC].

{¶6} Appellant contends in his assignment of error that the trial court erred by granting summary judgment. We disagree.

{¶7} When a declaratory judgment action is disposed of by summary judgment, our review of the trial court's resolution of legal issues is de novo. *Hastings Mut. Ins. Co. v. Halatek*, 174 Ohio App.3d 252, 2007-Ohio-6923, ¶29; *Progressive Preferred Ins. Co. v. Certain Underwriters at Lloyd's London*, 166 Ohio App.3d 1, 2006-Ohio-1442, ¶15. "When reviewing a trial court's ruling on summary judgment, the court of appeals

conducts an independent review of the record and stands in the shoes of the trial court.' " *Abrams v. Worthington*, 169 Ohio App.3d 94, 2006-Ohio-5516, ¶11 (quoting *Mergenthal v. Star Banc Corp.* (1997), 122 Ohio App.3d 100, 103). Civ.R. 56(C) provides that a trial court must grant summary judgment when the moving party demonstrates that: (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶6.

{¶8} A declaratory-judgment action is a civil action that provides a remedy in addition to other available legal and equitable remedies. *Aust v. Ohio State Dental Bd.* (2000), 136 Ohio App.3d 677, 681. The three essential elements for declaratory relief are that (1) a real controversy exists between the parties, (2) the controversy is justiciable in character, and (3) speedy relief is necessary to preserve the rights of the parties. *State ex rel. Gelesh v. State Med. Bd. of Ohio*, 172 Ohio App.3d 365, 2007-Ohio-3328, ¶7 (citing *Burger Brewing Co. v. Liquor Control Comm.* (1973), 34 Ohio St.2d 93, 97).

{¶9} On appeal, appellant claims that he did not receive meaningful parole consideration because his sentencing entry is void. This is not a justiciable controversy capable of resolution in an action for declaratory judgment. *Gotel v. Ganshiemer*, 11th Dist. No. 2008-A-0070, 2009-Ohio-5423, ¶47 (affirming dismissal of declaratory judgment action which sought to invalidate prior conviction); *Jackson v. Bartec, Inc.*, 10th Dist. No. 10AP-173, 2010-Ohio-5558, ¶37-38. A declaratory judgment action is not part of the criminal appellate process, and it cannot be used as a substitute for an appeal or as a collateral attack upon a conviction. *Moore v. Mason*, 8th Dist. No. 84821, 2004-Ohio-

1188, ¶14 (affirming dismissal of declaratory judgment action where criminal defendant sought to void his sentence). "Declaratory relief 'does not provide a means whereby previous judgments by state or federal courts may be reexamined, nor is it a substitute for appeal or post conviction remedies.' " *Id.* (quoting *Shannon v. Sequeechi* (C.A.10, 1996), 365 F.2d 827, 829.

{¶10} Here, because appellant's declaratory judgment action is merely an attempt to collaterally attack his prior conviction, the trial court did not err by granting summary judgment in appellees' favor. Accordingly, appellant's assignment of error is overruled, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.
