

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
APPELLATE DIVISION**

PAWEL MOCIO,  
Petitioner,

vs.

Appeal No. CRC 11-00058 APANO  
UCN 522011AP000058XXXXCR

STATE OF FLORIDA,  
Respondent.

Petition for Issuance of a Writ of Prohibition  
Addressing an Order Denying  
Motion to Dismiss entered  
by the Pinellas County Court,  
County Judge Henry J. Andringa

Dwight R. Dudley, Esquire  
Attorney for Petitioner

Theodora Komninos, Esquire  
Robert Morris, III, Esquire  
Office of the State Attorney  
Attorneys for Respondent

**ORDER DENYING PETITION FOR ISSUANCE  
OF WRIT OF PROHIBITION**

PETERS, Judge.

THIS MATTER is before the Court on the Petitioner's Petition for Issuance of a Writ of Prohibition. After reviewing the petition and record, this Court denies the petition.

*Factual Background and Trial Court Proceedings*

Petitioner, Pawel Mocio, was charged with battery. Mr. Mocio filed a motion to dismiss asserting statutory immunity pursuant to § 776.032, Fla. Stat. (2005). The trial

court conducted an evidentiary hearing. At the conclusion of the testimony of the witnesses and the argument of the parties the trial court denied the motion to dismiss. Mr. Mocio filed his Petition for Issuance of a Writ of Prohibition asking this court to preclude the County Court from exercising any further jurisdiction based upon his asserted claim of statutory immunity.

### *Writs of Prohibition*

A writ of prohibition is a discretionary writ, not a writ of right. “In Florida, the courts have consistently determined, in accord with the historical understanding and background of the writ of prohibition, that it is meant to be very narrow in scope, to be employed with great caution and utilized only in emergencies.” *English v. McCrary*, 348 So.2d 293, 296 (Fla. 1977). “Prohibition is an extraordinary writ by which a superior court may prevent an inferior court or tribunal, over which it has appellate and supervisory jurisdiction, from acting outside its jurisdiction. ... to prevent an impending injury where there is no other appropriate and adequate legal remedy.” *Mandico v. Taos Const., Inc.*, 605 So.2d 850, 853-854 (Fla. 1992) (internal citations omitted). A distinction is recognized by the authorities between the assumption of a jurisdiction, to which the court has no legal claim, and the mere erroneous exercise of a jurisdiction with which the court is invested. *Burkhart v. Circuit Court of Eleventh Judicial Circuit*, 146 Fla. 457, 462, 1 So.2d 872, 874 (Fla. 1941). “Abuse of discretion by the inferior tribunal acting within its jurisdiction is not a matter to be determined by prohibition. ... If the existence of jurisdiction depends on controverted facts which the inferior court has the jurisdiction to determine, and the court errs in the exercise thereof, prohibition is not available.” *English*, 348 So.2d at 298, (internal citations omitted). “[P]rohibition may

not be used to ... test the correctness of a lower tribunal's ruling on jurisdiction where the existence of jurisdiction depends on controverted facts that the inferior tribunal has jurisdiction to determine.” *Mandico*, 605 So.2d at 854. “[A] defendant cannot resort to a writ of prohibition where he [or she] has an adequate remedy via appeal.” *Sutton v. State*, 975 So.2d 1073, 1076 (Fla. 2008).

*Conclusion*

In the present case the County Court did not assume a jurisdiction, to which it had no legal claim it exercised a jurisdiction with which it is invested. Moreover the Petitioner has an adequate and appropriate legal remedy via plenary appeal if he is convicted in the trial court. A Writ of Prohibition is not appropriate in the present circumstances.

**IT IS THEREFORE ORDERED** that the Petition for Issuance of a Writ of Prohibition is denied.

**ORDERED** at Clearwater, Florida this 4<sup>th</sup> day of October, 2011.

Original order entered on October 4, 2011 by Circuit Judges Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.

Copies furnished to:

Dwight R. Dudley, Esquire  
Office of the State Attorney