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2012 IL App (3d) 110158-U

Order filed March 1, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

CURTIS DORTCH)	Appeal from the Circuit Court
)	of the 12 th Judicial Circuit
Plaintiff-Appellant,)	Will County, Illinois.
)	
v.)	Appeal No. 3-11-0158
)	Circuit No. 10-MR-180
MARCUS HARDY, Warden,)	
Stateville Correctional Center,)	The Honorable
)	Marzell Richardson,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly dismissed the plaintiff's petition for habeas corpus relief because he did not assert a claim that could be remedied under the habeas corpus statute.
- ¶ 2 Curtis Dortch, the plaintiff, filed a petition for habeas corpus relief. Marcus Hardy, the defendant and warden of the Stateville Correctional Center, filed a section 2-615 motion to

dismiss, and a motion for sanctions. The trial court granted the defendant's 2-615 motion to dismiss, but denied to impose sanctions on the plaintiff. The plaintiff appeals, contending that the trial court erred when it dismissed his habeas corpus petition. We affirm.

¶ 3

FACTS

¶ 4 After a bench trial, a Cook County circuit court convicted the plaintiff of, among other things, two counts of murder (Ill. Rev. Stat. 1979, ch. 38, par. 9-1(a)(2)) and one count of attempted murder (Ill. Rev. Stat. 1979, ch. 38, par. 8-4). The circuit court subsequently sentenced the plaintiff to two concurrent terms of life imprisonment for the murder convictions, and to a concurrent 30-year term of imprisonment for the attempted murder conviction. The plaintiff appealed his convictions and sentences, and the First District of the Illinois Appellate Court affirmed. *People v. Dortch*, 1-81-2451 (1981) (unpublished order under Supreme Court Rule 23).

¶ 5 On February 23, 2010, the plaintiff filed the instant amended petition for habeas corpus relief in the Will County trial court, which was his fifth habeas corpus petition. In this petition, the plaintiff alleged that he was “being held illegally without cause[,]” in violation of his right to due process, because at a preliminary hearing on the instant offenses, the trial court found “no probable cause.” The plaintiff asserted that pursuant to this finding, he should have been immediately released from jail, and thus, he is now entitled to immediate release from prison. In this petition, the plaintiff acknowledged that the “no probable cause [finding was] made by the Court which had jurisdiction over [the plaintiff].” The record also indicates that in his initial fifth petition for habeas corpus relief, the plaintiff stated that “a [c]ourt of competent jurisdiction held an adjudicatory hearing” and found no probable cause. The record further indicates that after

this “no probable cause” finding, the State filed an indictment that charged the plaintiff with the aforementioned offenses, and a grand jury subsequently indicted the plaintiff of the offenses.

¶ 6 The defendant, in turn, filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2010)). The defendant alleged that the plaintiff’s petition failed to state a ground for relief under the Illinois habeas corpus statute (735 ILCS 5/10-101 *et seq.* (West 2010)). The defendant specifically asserted that since the plaintiff’s motion did not allege that the trial court lacked jurisdiction to enter the contested judgment or that there was some postconviction event that entitled the plaintiff to immediate release, which were the only cognizable grounds for relief under the habeas corpus statute, the plaintiff failed to state a cause of action upon which relief could be granted. In this motion, the defendant also requested sanctions under section 22-105 of the Code (735 ILCS 5/22-105 (West 2010)), alleging that the plaintiff’s petition was frivolous and that he had made numerous similar filings in the past, each of which had been dismissed.

¶ 7 The trial court conducted a hearing on the plaintiff’s petition for habeas corpus, and took the matter under advisement. It ultimately issued an order granting the defendant’s motion to dismiss. The court specifically found that the plaintiff’s complaint failed to state a valid claim for habeas corpus relief. The court, however, denied the defendant’s motion to impose sanctions.

¶ 8 The plaintiff appealed.

¶ 9 ANALYSIS

¶ 10 On appeal, the plaintiff contends that the trial court erred when it dismissed his habeas corpus petition because he has been “illegal[ly]” imprisoned since the Cook County circuit court found “no probable cause” at a preliminary hearing. The plaintiff thus asserts that his convictions

are void, and further asserts that he should have been released from jail immediately following the “no probable cause” finding, and therefore, he should now be immediately released from prison. In his reply brief, the plaintiff also alleges that his petition for habeas corpus “asserted a viable claim implicating the [Cook County] [c]ircuit [c]ourt’s lack of [j]urisdiction” because “any action taken by the State is void and may be attacked at any time” after the court’s “no probable cause” finding. He further asserts that “the State’s Attorney and Cook County Sheriff both lacked jurisdiction to continuously hold [him] in custody.”

¶ 11 The defendant, on the other hand, asserts that in the plaintiff’s petition for habeas corpus relief, he failed to allege that the trial court was without jurisdiction to enter his conviction, or that some postconviction event had occurred that entitled him to relief, and thus, he has not stated a cognizable claim for relief under the habeas corpus statute. We conclude that the trial court properly dismissed the plaintiff’s fifth petition for habeas corpus relief because he did not bring forth a claim that could be remedied under the habeas corpus statute.

¶ 12 Pursuant to Illinois law, a prisoner may seek habeas corpus relief in an Illinois court. See 735 ILCS 5/10-101 *et seq.* (West 2010). However, habeas corpus provides relief only on the grounds specified in section 10-124 of the Code. *People v. Gosier*, 205 Ill. 2d 198 (2001); see also *Hughes v. Kiley*, 67 Ill. 2d 261 (1977) (supreme court noted that habeas corpus relief is available only in limited situations). Specifically, pursuant to section 10-124 of the Code, an order of habeas corpus may only be used to obtain the release of a prisoner who has been incarcerated under a judgment of a court that lacked subject matter or personal jurisdiction over the prisoner, or where some event occurred after the prisoner’s conviction that entitles him to release. *Barney v. Prisoner Review Board*, 184 Ill. 2d 428 (1998). A petition for habeas corpus may not be used to review proceedings that do not exhibit a defect enumerated in section 10-124

of the Code, even if the alleged error involves a denial of constitutional rights. *Beacham v. Walker*, 231 Ill. 2d 51 (2008). Furthermore, while a void judgment may be attacked at any time, including in a petition for habeas corpus, the remedy of habeas corpus is not available to review errors that are of a nonjurisdictional nature, even if a constitutional claim is involved. *People ex rel. Lewis v. Frye*, 42 Ill. 2d 311 (1969).

¶ 13 A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint by asserting that it fails to state a cause of action upon which relief can be granted. *T&S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080 (1994). The burden is on the plaintiff to allege sufficient facts to bring a claim within a legally recognized cause of action. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422 (2006). For purposes of a section 2-615 motion to dismiss, all well-pleaded facts are to be taken as true; however, this motion does not admit conclusions of law or fact unsupported by allegations of specific facts upon which these conclusions rest. *Bank of Lincolnwood v. Comdisco, Inc.*, 111 Ill. App. 3d 822 (1982). In reviewing the dismissal of a pleading pursuant to section 2-615 of the Code, the question is whether the allegations in the complaint, taken in the light most favorable to the petitioner, are sufficient to establish a cause of action upon which relief can be granted. *Green v. Rogers*, 234 Ill. 2d 478 (2009). This court conducts a *de novo* review of the trial court's order granting a party's 2-615 motion to dismiss. *Wakulich v. Mraz*, 203 Ill. 2d 223 (2003).

¶ 14 In this case, the plaintiff's petition does not allege any error that is subject to relief by an order of habeas corpus. Specifically, the plaintiff has neither alleged nor shown that the Cook County circuit court lacked subject matter jurisdiction over the proceedings or lacked personal jurisdiction over him. In fact, the plaintiff has acknowledged that the Cook County circuit court had personal jurisdiction over him.

¶ 15 Rather, in his reply brief, the plaintiff contends that the action of the State after the “no probable cause finding” was void and therefore, his petition properly implicated the jurisdiction of the Cook County circuit court. However, for a judgment to be void, the proponent must establish that the court lacked jurisdiction to enter the contested order, or that the court entered an order without the inherent power to do so. *People v. Wade*, 116 Ill. 2d 1 (1987). Here, the plaintiff’s contention centers on an action by the State that the plaintiff contends is void, that is, not releasing him from jail following the circuit court’s finding of “no probable cause.” However, the plaintiff has not established how this action of the State rendered the Cook County circuit court without authority to convict him of the offenses for which it ultimately convicted him, nor has he shown that it deprived the circuit court of jurisdiction over the plaintiff or the subject matter.

¶ 16 Furthermore, the plaintiff has not alleged or shown that an event has occurred subsequent to his conviction that would entitle him to immediate release from custody. Rather, the plaintiff contests an event that occurred prior to his conviction and asserts that this preconviction event requires his release from custody. However, an event that occurs prior to the plaintiff’s conviction is not a ground enumerated in section 10-124 of the Code and thus, it is not a ground on which a trial court can grant relief pursuant to an order for habeas corpus. Therefore, the plaintiff has not established that an event occurred after his conviction that would entitle him to immediate release from prison.

¶ 17 **CONCLUSION**

¶ 18 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 19 Affirmed.