

NOTICE
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2012 IL App (4th) 110655-U

Filed 9/18/12

NO. 4-11-0655

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

GERMAINE A. ELCOCK,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County,
SHERYL THOMPSON, Warden,)	No. 10MR112
Defendant-Appellee.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in dismissing plaintiff's petition for writ of *habeas corpus* where she failed to state a valid claim.

¶ 2 In November 2010, plaintiff, Germaine A. Elcock, filed a petition for writ of *habeas corpus* naming Sheryl Thompson, the warden of Dwight Correctional Center, as defendant. In July 2011, the trial court granted defendant's motion to dismiss. Plaintiff appeals, and we affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts are taken from the Second District Appellate Court's opinion disposing of plaintiff's direct appeal. See *People v. Elcock*, 396 Ill. App. 3d 524, 527-529, 919 N.E.2d 984, 986-88 (2009).

¶ 5 Janet Stein, then 74 years old, resided in Lincolnshire, Illinois, but spent

approximately 5 months of the year in Florida. In November 2006, while Stein was in Florida, she received a phone call from a woman claiming to be from the United States Treasury Department. Stein provided the woman her driver's license number, confirmed her daughter's name, and confirmed she was receiving social security checks for a specific amount. Another call came a few days before she was scheduled to fly back to Illinois. That call was from a woman claiming to be from American Airlines. Following the phone call, Stein called the airline multiple times to check on the status of her reservation, which was changed and ultimately canceled without her knowledge. After learning someone had cancelled her flight, Stein checked on her bank accounts with J.P. Morgan Chase, which were in her daughter's name, and discovered three unauthorized \$15,000 transfers from her Chase accounts to an account with Fidelity Investments.

¶ 6 Charlotte Weidman, then 81 years old, resided in Lincolnshire, Illinois. In November 2006, she received a phone call from a woman claiming she was from the "office of the bureau of highway license." Thereafter, Weidman received a debit card in the mail with her name on it. She had never requested the card, so she called and cancelled it. The same day, she received a call from Glen Tierney of Fidelity Investments. Weidman had a mutual fund account with Fidelity. Tierney investigated financial crimes for Fidelity. He was assigned to investigate a complaint Stein made regarding a Fidelity brokerage account established without her authorization. Tierney determined the account was set up on the Internet. The legal address on the account was changed from Lincolnshire, Illinois to Fayetteville, North Carolina. Three transfers of \$15,000 each were electronically made to the account from a Chase account in November 2006. A "gold check card" was issued and used in and around Fayetteville at

automated teller machines, a Chili's restaurant, a Wal-Mart, and post offices. A total of \$28,408.19 was withdrawn from the Fidelity account in Stein's name. Tierney determined the same computer was used to access both Stein's and Weidman's accounts.

¶ 7 In April 2007, the State filed a seven-count complaint against plaintiff. Count I charged her with aggravated identity theft of over \$100,000 (720 ILCS 5/16G-20 (West 2006)), "in that in a series of acts in furtherance of a single intention and design, [she] knowingly used the personal identifying information of Janet Stein and Charlotte Weidman, being their names, to fraudulently obtain \$116,053.37 in the names of" Stein and Weidman. Count I also alleged Stein and Weidman were over 60 years old. Count II charged plaintiff with aggravated identity theft of between \$10,000 and \$100,000 (720 ILCS 5/16G-20 (West 2006)) for using Stein's name to fraudulently obtain \$45,000. Count III charged plaintiff with aggravated identity theft of between \$10,000 and \$100,000 for using Stein's social security number to fraudulently obtain \$45,000. Count IV charged plaintiff with aggravated identity theft of between \$10,000 and \$100,000 for using Weidman's name to fraudulently obtain \$71,053.37 of credit. Count V charged plaintiff with aggravated identity theft of between \$10,000 and \$100,000 for using Weidman's social security number to fraudulently obtain \$71,053.37 of credit. Count VI charged plaintiff with theft of over \$100,000 (720 ILCS 5/16-1(a)(1) (West 2006)) in that she, "in a series of acts in furtherance of a single intention and design, knowingly exerted unauthorized control over the property of Janet Stein and Charlotte Wiedman [*sic*], being United States Currency having a total value in excess of \$100,000," intending to permanently deprive them of the money. Count VII charged plaintiff with wire fraud (720 ILCS 5/17-24(a) (West 2006)) for using electronic impulses received by a person in Illinois in furtherance of a scheme to obtain money through

false representations. *Elcock*, 396 Ill. App. 3d at 526-527, 919 N.E.2d at 986.

¶ 8 Following a 2007 trial in Lake County, a jury convicted plaintiff of aggravated identity theft of over \$100,000 (720 ILCS 5/16G-20 (West 2006)), theft of over \$100,000 (720 ILCS 5/16-1(a)(1) (West 2006)), and wire fraud (720 ILCS 5/17-24(a) (West 2006)). The trial court found the latter convictions merged into the aggravated identity theft conviction and sentenced plaintiff to 18 years' imprisonment.

¶ 9 On direct appeal, the Second District Appellate Court reversed plaintiff's aggravated identity theft over \$100,000 and theft over \$100,000 convictions finding, *inter alia*, (1) the aggravated identity theft and theft of over \$100,000 convictions could not stand because section 111-4(c) of the Criminal Code of 1961 (Code) did not allow multiple acts of identity theft to be joined to meet the "over \$100,000" element and (2) the evidence sufficiently proved her guilty of identity theft of between \$10,000 and \$100,000 as to each woman individually. *Elcock*, 396 Ill. App. 3d at 536-37, 919 N.E.2d at 993-94. The Second District affirmed plaintiff's remaining convictions, including the lesser-included convictions of aggravated identity theft between \$10,000 and \$100,000, and remanded the cause for, *inter alia*, resentencing. *Elcock*, 396 Ill. App. 3d at 537, 540-41, 919 N.E.2d at 994, 997.

¶ 10 In February 2010, the trial court resentenced plaintiff to concurrent terms of 15 years' imprisonment.

¶ 11 On June 9, 2010, plaintiff filed a *pro se*, handwritten postconviction petition, alleging, *inter alia*, Illinois lacked jurisdiction to put her on trial and an illegal search and seizure had occurred.

¶ 12 On September 3, 2010, the trial court found plaintiff's petition was frivolous and

without merit because it failed to raise the gist of a constitutional claim.

¶ 13 On April 10, 2012, the Second District Appellate Court affirmed the trial court's dismissal of plaintiff's postconviction petition. *People v. Elcock*, 2012 IL App (2d) 101021-U (unpublished under Illinois Supreme Court Rule 23).

¶ 14 On November 24, 2010, plaintiff filed the petition for writ of *habeas corpus* herein, alleging she was entitled to immediate release because (1) the Lake County State's Attorney lacked jurisdiction to put her on trial because no aspect of the charge occurred in Illinois and (2) her fourth amendment rights (U.S. Const., amend. IV) were violated.

¶ 15 On April 11, 2011, defendant moved to dismiss plaintiff's petition pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2010)), arguing (1) plaintiff's allegations the State's Attorney lacked jurisdiction did not entitle her to *habeas* relief and (2) plaintiff's fourth amendment argument failed to state a cognizable *habeas* claim.

¶ 16 On July 14, 2011, the trial court granted defendant's motion and dismissed plaintiff's petition. Specifically, the court found plaintiff's jurisdictional argument lacked support and "plaintiff's Fourth Amendment claims [did] not []rise to the level of *habeas corpus* relief."

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, plaintiff argues the trial court erred in dismissing her *habeas corpus* petition. We disagree.

¶ 20 A. Standard of Review

¶ 21 A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint

based on defects apparent on its face. 735 ILCS 5/2-615 (West 2010); *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364, 821 N.E.2d 1099, 1110 (2004). In reviewing the sufficiency of a complaint, we construe the complaint's allegations in the light most favorable to the plaintiff. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 11-12, 828 N.E.2d 1155, 1161 (2005). We also accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Beretta U.S.A. Corp.*, 213 Ill. 2d at 364, 821 N.E.2d at 1110. A claim should not be dismissed unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Canel v. Topinka*, 212 Ill. 2d 311, 318, 818 N.E.2d 311, 317 (2004). We review *de novo* an order granting a section 2-615 motion to dismiss. *Canel*, 212 Ill. 2d at 318, 818 N.E.2d at 317.

¶ 22

B. Habeas Corpus Relief

¶ 23

Section 10-124 of the Procedure Code (735 ILCS 5/10-124 (West 2010)), which sets forth the grounds for relief available through a *habeas corpus* proceeding, states the following:

"If it appears that the prisoner is in custody by virtue of process from any court legally constituted, he or she may be discharged only for one or more of the following causes:

1. Where the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum[,]
or person.
2. Where, though the original imprisonment was lawful, nevertheless, by some act, omission[,]

or event which has subsequently taken place, the party has become entitled to be discharged.

3. Where the process is defective in some substantial form required by law.

4. Where the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process to issue or orders to be entered for imprisonment or arrest.

5. Where, although in proper form, the process has been issued in a case or under circumstances unauthorized to issue or execute the same, or where the person having the custody of the prisoner under such process is not the person empowered by law to detain him or her.

6. Where the process appears to have been obtained by false pretense or bribery.

7. Where there is no general law, nor any judgment or order of a court to authorize the process if in a civil action, nor any conviction if in a criminal proceeding. No court, on the return of a *habeas corpus*, shall, in any other matter, inquire

into the legality or justice of a judgment of a court
legally constituted." 735 ILCS 5/10-124 (West
2010).

These seven bases have been summarized as allowing *habeas corpus* relief where (1) the trial court lacked jurisdiction or (2) an occurrence has taken place after the prisoner's conviction that entitles him to release. *Adcock v. Snyder*, 345 Ill. App. 3d 1095, 1098, 804 N.E.2d 141, 143 (2004). A petition that fails to allege one of these defects may not be reviewed through a *habeas corpus* proceeding. *Robinson v. Schomig*, 326 Ill. App. 3d 447, 448-49, 760 N.E.2d 572, 573 (2001) (citing *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430, 704 N.E.2d 350, 351 (1998)); *People v. Gosier*, 205 Ill. 2d 198, 206, 792 N.E.2d 1266, 1270 (2001) (affirming dismissal of a petition for writ of *habeas corpus* where the defendant did not raise any question regarding jurisdiction or allege a postconviction event that would entitle him to release).

¶ 24

C. Alleged Lack of Jurisdiction

¶ 25 Plaintiff's petition alleged she was entitled to *habeas* relief where "the Lake County State[]s Attorney[]s office lacked jurisdiction to put [her] on trial because no aspect of this charge of [a]ggravated [identity] theft as defined by Illinois statute 720 ILCS 5/16G-20(a) occurred within the state of Illinois." Plaintiff also argued "under the law of jurisdiction [(720 ILCS [5/1-5] (West 2010))], nothing jurisdictionally significant occurred within the state of Illinois." (We note while section 16G-20(a) of the Code does not contain a jurisdictional element (see 720 ILCS 5/16G-20(a) (West 2010)), section 16G-35 provides venue "shall be proper in any county" where the person whose personal information was improperly used resides. 720 ILCS 5/16G-35 (West 2010)).

¶ 26 In this case, however, plaintiff failed to allege the *trial court* lacked subject-matter or personal jurisdiction. Instead, we understand plaintiff to have alleged the Lake County State's Attorney lacked state criminal jurisdiction under section 1-5 of the Code (720 ILCS 5/1-5 (West 2010)). However, section 1-5 of the Code provides the limits of a State's Attorney's authority to prosecute a individual and does not implicate the subject-matter jurisdiction of the trial court. See 720 ILCS 5/1-5 (West 2010); see also *In re Luis R.*, 239 Ill. 2d 295, 303, 941 N.E.2d 136, 141 (2010) ("subject matter jurisdiction has nothing to do with the legal sufficiency of the asserted claim"). Thus, plaintiff's allegation does not entitle plaintiff to *habeas* relief. See 735 ILCS 5/10-124 (West 2010) (referring to the *trial court's* jurisdiction); *Beacham v. Walker*, 231 Ill. 2d 51, 58, 896 N.E.2d 327, 332 (2008) ("It is well established that an order of *habeas corpus* is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court that lacked jurisdiction of the subject matter or the person of the petitioner ***").

¶ 27 Assuming, *arguendo*, plaintiff had alleged the trial court lacked subject-matter jurisdiction, plaintiff's claim would still fail. "Subject matter jurisdiction refers to the court's power 'to hear and determine cases of the general class to which the proceeding in question belongs.' " *In re M.W.*, 232 Ill. 2d 408, 415, 905 N.E.2d 757, 763 (2009) (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 184 (2002)). Subject-matter jurisdiction is conferred on the circuit courts by the Illinois Constitution. *People v. Gilmore*, 63 Ill. 2d 23, 26, 344 N.E.2d 456, 458 (1976). "Circuit Courts shall have original jurisdiction of all justiciable matters ***." Ill. Const. 1970, art. VI, § 9. "[O]nce the legislature creates a justiciable matter, [(in this case, aggravated identify theft),] the circuit court's authority to adjudicate that matter derives exclusively from the state constitution and therefore

cannot be limited by the authorizing statute." *Luis R.*, 239 Ill. 2d at 304, 941 N.E.2d at 141-42 (citing *Belleville Toyota*, 199 Ill. 2d at 334-35, 770 N.E.2d at 184. The trial court obtains subject-matter jurisdiction when the State's Attorney creates a justiciable controversy by leveling criminal charges against a defendant and filing them with the court. *People v. Woodall*, 333 Ill. App. 3d 1146, 1156, 777 N.E.2d 1014, 1022 (2002).

¶ 28 Thus, section 1-5 of the Code does not function to limit the trial court's jurisdiction to hear charges brought by the State's Attorney, who in turn *is* limited by the section 1-5 requirements. "The *only* consideration is whether the asserted claim, legally sufficient or not, was filed in the proper tribunal[.]" *i.e.*, the circuit court as opposed to the Illinois Human Right's Commission or the Court of Claims. *Luis R.*, 239 Ill. 2d at 303, 941 N.E.2d at 141. This is true even where the complaint may violate the state criminal jurisdictional requirements of section 1-5. See *Luis R.*, 239 Ill. 2d at 303, 941 N.E.2d at 141 (noting the necessity for a circuit court to have subject-matter jurisdiction to be able to decide such questions).

¶ 29 In this case, the trial court acquired subject-matter jurisdiction over the controversy in April 2007 when the State filed criminal charges in the court. See *Elcock*, 396 Ill. App. 3d at 526, 919 N.E.2d at 985. Once the State filed those charges, "the circuit court's subject matter jurisdiction [was] triggered, and it possess[ed] all authority to adjudicate the merits of the State's claim, including whether that claim falls outside the [State's] grant of authority." *Luis R.*, 239 Ill. 2d at 304-05, 941 N.E.2d at 142. Plaintiff did not contest the court's authority to adjudicate her cause in the original proceeding and submitted to the court's authority. See *Elcock*, 396 Ill. App. 3d at 526, 919 N.E.2d at 985.

¶ 30 Although not challenged, we note the court also acquired personal jurisdiction over

plaintiff when she appeared personally in court to answer the charge. See *Woodall*, 333 Ill. App. 3d at 1156, 777 N.E.2d at 1022 ("A criminal defendant confers personal jurisdiction upon the trial court when he appears and joins the issues with a plea"). Accordingly, the trial court did not err in finding plaintiff's *habeas* petition did not raise a valid jurisdictional issue.

¶ 31 D. Alleged Fourth Amendment Violation

¶ 32 Plaintiff's petition also alleged she was entitled to *habeas* relief because her fourth amendment rights were violated when a postal inspector conducted a warrantless search and seizure of certain items.

¶ 33 However, *habeas corpus* relief is limited solely to the grounds specified in the Procedure Code and may not be used to review proceedings that do not exhibit one of the defects set forth therein, even though the alleged error involves a denial of constitutional rights. *Schlemm v. Cowen*, 323 Ill. App. 3d 318, 321, 752 N.E.2d 647, 649 (2001). *Habeas corpus* relief is not proper where the occurrence complained of takes place prior to the prisoner's conviction. See *Adcock*, 345 Ill. App. 3d at 1098, 804 N.E.2d at 143 ("*habeas corpus* relief is appropriate only where *** some occurrence has taken place after the prisoner's conviction that entitles him to release").

¶ 34 In this case, the postal inspector's actions of which plaintiff complains took place *prior to* her conviction. Thus, plaintiff's fourth amendment claim failed to allege a *postconviction* event that would entitle her to *habeas* relief. Accordingly, the trial court did not err by dismissing plaintiff's petition for writ of *habeas corpus*.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the trial court's judgment.

¶ 37 Affirmed.