



trial court granted defendants' motion and dismissed plaintiff's petition as moot.

¶ 3 Plaintiff appeals, arguing the trial court improperly dismissed his petition.

Plaintiff further urges this court to rule on his petition and make a declaration that his constitutional rights were violated. We decline plaintiff's invitation and affirm.

¶ 4 I. BACKGROUND

¶ 5 On June 1, 2011, plaintiff filed a petition for *habeas corpus*, naming as defendants Gladyse Taylor, the Prisoner Review Board, Keith Anglin (warden at Danville Correctional Center), Guy Pierce (warden of Pontiac Correctional Center (Pontiac)), Sherri Simpson and P. Hastings (grievance officers at Pontiac), and Wayne Germain (records office supervisor at Pontiac). Plaintiff alleged he was improperly detained past his discharge date. The record indicates plaintiff believed his discharge date to be March 26 or 28, 2010. On June 8, 2011, plaintiff filed with the circuit clerk summonses to be issued to Germain, Hastings, Simpson, Pierce, Anglin, and the Prisoner Review Board. On June 20, 2011, the circuit clerk returned the summonses to plaintiff and informed him he must send the summonses "to the sheriff or authorized person." The record shows Germain, Simpson, Hastings, and the Prisoner Review Board were thereafter served but did not respond to plaintiff's petition.

¶ 6 On August 8 and 12, 2011, respectively, although not named as defendants, Randy Pfister, acting warden at Pontiac, and Jorge Montes, Chairman of the Prisoner Review Board, filed motions to dismiss plaintiff's petition. Pfister explained that the proper defendant in a *habeas corpus* case is the plaintiff's current custodian, and at the time plaintiff filed his petition, Pfister was the acting warden at Pontiac where plaintiff was imprisoned. Therefore, Pfister was plaintiff's custodian and the proper defendant to this case. Pfister and Montes both asserted

plaintiff had been released from Pontiac on June 24, 2011, and thus, his petition for *habeas corpus* was moot.

¶ 7 On September 13, 2011, plaintiff filed a motion to strike defendants' motion to dismiss and a memorandum in support of his motion. On January 5, 2012, the trial court dismissed plaintiff's petition "as to all defendants" as moot.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, plaintiff argues the trial court improperly dismissed his petition. Plaintiff further urges this court to rule on his petition and make a declaration that his constitutional rights were violated. We decline plaintiff's invitation and affirm.

¶ 11 Initially, we note plaintiff named and served several defendants, while at the same time failing to name and serve the proper defendant to this case. Plaintiff filed a *habeas corpus* petition pursuant to section 10-102 of the Code of Civil Procedure (Civil Procedure Code) (735 ILCS 5/10-102 (West 2010)). By filing his petition, plaintiff requested "the person detaining him to produce the body of the prisoner to test the legality of the detention" and to be released if that detention proved to be unlawful. *Hennings v. Chandler*, 229 Ill. 2d 18, 25, 890 N.E.2d 920, 924 (2008). When plaintiff filed his petition, he was in the custody of Pontiac, and therefore, the person detaining him was the acting warden, Pfister. Thus, Pfister should have been named as the defendant in this case.

¶ 12 Although not named or served, defendant Pfister responded and moved to dismiss plaintiff's petition as moot under section 2-619 of the Civil Procedure Code (735 ILCS 5/2-619(a)(9) (West 2010)). Our review of a dismissal under section 2-619 is *de novo*. *Mann v.*

*Thomas Place, L.P.*, 2012 IL App (1st) 110625, ¶ 13, 976 N.E.2d 554, 557.

¶ 13 When a *habeas corpus* petition is filed, the trial court is required to conduct an initial review of the petition and determine if it sufficiently establishes a question as to the legality of the plaintiff's imprisonment. *Hennings*, 229 Ill. 2d at 26, 890 N.E.2d at 924. If the petition meets this threshold, the court shall grant an order of *habeas corpus*. *Hennings*, 229 Ill. 2d at 26, 890 N.E.2d at 924. "Conversely, if it is clear from a review of the complaint that the plaintiff is not entitled to the relief of *habeas corpus*, the order shall be denied." *Hennings*, 229 Ill. 2d at 26, 890 N.E.2d at 925. Thus, in determining whether the court properly denied plaintiff's petition, we must consider whether plaintiff was entitled to *habeas corpus* relief.

¶ 14 For a plaintiff to show he is entitled to *habeas corpus* relief, he must establish that one of two situations is applicable to him: (1) the trial court originally lacked jurisdiction to impose sentence or (2) some postsentencing occurrence entitles him to release. *People v. Purnell*, 356 Ill. App. 3d 524, 528, 825 N.E.2d 1234, 1238 (2005). *Habeas corpus* relief consists solely of a prisoner's immediate release from custody. *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125, 853 N.E.2d 878, 881 (2006).

¶ 15 Here, on June 1, 2011, plaintiff filed a petition for *habeas corpus* relief, alleging he was held past his discharge date. However, the record shows on June 24, 2011, plaintiff was released from the Department's custody. Because the only relief plaintiff would have been entitled to was his release from prison, the trial court was unable to grant plaintiff any effectual relief, and thus, his petition became moot once he was released. See *People v. Jackson*, 231 Ill. 2d 223, 227, 897 N.E.2d 752, 755 (2008) (where a court cannot grant a complaining party effective relief, the issue is moot). Finding plaintiff's petition was moot, the court properly

dismissed it.

¶ 16 In closing, we briefly address plaintiff's request to make a declaration on his *habeas corpus* petition that his constitutional rights were violated. Plaintiff's request is based upon his belief he must obtain judgment on his *habeas corpus* petition in state court before he can file a section 1983 claim (42 U.S.C. § 1983 (2006)) for violation of his constitutional rights in federal court. As noted above, the only relief available in a *habeas corpus* proceeding is release from confinement.

¶ 17 "In general, exhaustion of state remedies 'is *not* a prerequisite to an action under [section] 1983,' *Patsy v. Board of Regents of Fla.*, 457 U.S. 496, 501 (1982) (emphasis added)." *Heck v. Humphrey*, 512 U.S. 477, 480 (1994). The federal *habeas corpus* statute does, however, require state prisoners to seek redress in state court before filing federal *habeas corpus* petitions. *Heck*, 512 U.S. at 480-81. Plaintiff does not seek to file a federal *habeas corpus* petition but rather seeks to file a section 1983 claim. Thus, plaintiff does not need a state adjudication on his *habeas corpus* petition, to pursue any other action.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the trial court's dismissal.

¶ 20 Affirmed.