NOTICE
Decision filed 03/14/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110069-U

NO. 5-11-0069

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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| HOWARD R. CUNNINGHAM, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellant, | ) | Randolph County. |
| | ) | |
| v. | ) | No. 10-MR-90 |
| | ) | |
| MIKE ATCHISON[1], Warden, | ) | |
| Menard Correctional Center, | ) | Honorable |
| | ) | Eugene E. Gross, |
| Defendant-Appellee. | ) | Judge, presiding. |

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held*: Where the circuit court had subject matter jurisdiction over the case and personal jurisdiction over the defendant, and no postconviction occurrence entitles the defendant to release, the defendant's *habeas corpus* complaint was properly dismissed.

¶ 2 The appellant, Howard R. Cunningham, appeals the order of the circuit court of Randolph County dismissing his *habeas corpus* complaint. For the reasons which follow, we affirm the decision of the circuit court.

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[1]Mike Atchison has replaced David Rednour as the warden of the Menard Correctional Center, where the plaintiff is incarcerated. Pursuant to section 10-107 of the Code of Civil Procedure (735 ILCS 5/10-107 (West 2008)), Atchison should be substituted as the defendant in this action. See *Hennings v. Chandler*, 229 Ill. 2d 18, 23-24 n.2 (2008) (the proper defendant in a *habeas corpus* case is the plaintiff's current custodian).

¶ 3 Howard R. Cunningham pled guilty but mentally ill to two counts of aggravated criminal sexual assault, one count of child pornography, and four counts of aggravated criminal sexual abuse in May 1991. The circuit court of Marion County sentenced Cunningham to consecutive 35-year terms on the aggravated sexual assault counts and concurrent sentences ranging from 7 to 15 years on the remaining counts.

¶ 4 This court affirmed the judgment of the circuit court on direct appeal. *People v. Cunningham*, No. 5-91-0396 (1994) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)). Cunningham then filed two postconviction petitions, both of which were dismissed. No. 5-00-0002 (2001) (unpublished order under Supreme Court Rule 23); No. 5-01-0658 (2002) (unpublished order under Supreme Court Rule 23).

¶ 5 On December 1, 2010, Cunningham filed a *habeas corpus* complaint in the circuit court of Randolph County. In his *pro se* complaint, Cunningham argued that the State's Attorney who prosecuted him did not have the authority to do so. According to Cunningham, the Illinois Constitution confers exclusive criminal prosecutorial authority to the Attorney General, as an officer of the state, whereas the State's Attorney is an officer of the county from which he is elected. Because Cunningham was prosecuted by a county officer instead of a state officer, he argued that his convictions were void.

¶ 6 On January 7, 2011, the defendant filed a motion to dismiss Cunningham's complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2010)) on the grounds that Cunningham had failed to allege a claim entitling him to relief. The defendant also argued that Cunningham's claim was wholly without merit and was barred by the doctrine of *laches*. Cunningham filed a *pro se* response.

¶ 7 On February 2, 2011, the circuit court dismissed Cunningham's complaint with prejudice. It is from this order that the defendant appeals.

¶ 8 We are called upon to review the circuit court's ruling on the defendant's section 2-615

motion to dismiss. We review an order granting a section 2-615 motion to dismiss *de novo*. *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008).

¶ 9 A motion to dismiss under section 2-615 attacks the legal sufficiency of a complaint based on defects on its face. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). In ruling on a section 2-615 motion, a court must accept as true all well-pled facts in the complaint and all reasonable inferences therefrom. *Vitro*, 209 Ill. 2d at 81. The critical inquiry is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *Vitro*, 209 Ill. 2d at 81. The plaintiff bears the burden of alleging facts sufficient to bring a claim within a legally recognized cause of action. *Beacham*, 231 Ill. 2d at 58.

¶ 10 *Habeas corpus* relief is available only on the grounds specified in section 10-124 of the Code of Civil Procedure (735 ILCS 5/10-124 (West 2010)). It is well established that an order of *habeas corpus* is available only when a prisoner has been incarcerated under the judgment of a court that lacked jurisdiction over either the subject matter or the prisoner, or where there has been some occurrence subsequent to the prisoner's conviction that entitles him to release. *Beacham*, 231 Ill. 2d at 58. A *habeas corpus* complaint cannot be used to review proceedings that do not exhibit one of these defects, even if the alleged error involves the denial of a constitutional right. *Beacham*, 231 Ill. 2d at 58. " ' "The writ [of *habeas corpus*] should never issue unless a petition is presented which is in substantial accord and compliance with the provisions of the statute, and which shows upon its face that the petitioner is entitled to his discharge." ' " *Beacham*, 231 Ill. 2d at 59 (quoting *Hennings v. Chandler*, 229 Ill. 2d 18, 28 (2008) (quoting *People ex rel. Stead v. Superior Court*, 234 Ill. 186, 198 (1908))).

¶ 11 We now turn to the facts before us. First, no postconviction event has occurred that entitles Cunningham to release. Cunningham's argument that the wrong body prosecuted him

relates to events that occurred at and during trial. Cunningham does not make any argument regarding a postconviction occurrence that entitles him to release. Further, Cunningham's sentence does not expire until January 29, 2029; therefore his continued custody by the Illinois Department of Corrections is legal. See *Taylor v. Cowan*, 339 Ill. App. 3d 406, 410-411 (2003). As such, no postconviction event has occurred that entitles Cunningham to release.

¶ 12 "A criminal defendant confers personal jurisdiction upon the trial court when he appears and joins the issues with a plea." *People v. Woodall*, 333 Ill. App. 3d 1146, 1156 (2002). Thus, the circuit court of Marion County acquired personal jurisdiction over Cunningham when he appeared and filed a plea.

¶ 13 Last, the court had subject matter jurisdiction over Cunningham's case. Subject matter jurisdiction refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). With the exception of the circuit court's power to review administrative actions, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred entirely by the state constitution. Ill. Const. 1970, art. VI, § 9; *People v. Benitez*, 169 Ill. 2d 245, 256 (1996). This jurisdiction extends to all "justiciable matters." Ill. Const. 1970, art. VI, § 9. "[A] 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota*, 199 Ill. 2d at 335. The circuit court acquired subject matter jurisdiction when the State's Attorney created a justiciable controversy by leveling criminal charges. See *Woodall*, 333 Ill. App. 3d at 1156. Even if, as the defendant contends, the State's Attorney was not the proper prosecuting authority, his appearance did not "deprive the trial court of its power to act." *Woodall*, 333 Ill. App. 3d at 1156-57.

¶ 14 We note, however, that the State's Attorney is the proper prosecuting authority in the case at hand. "The duty of each State's attorney shall be *** [t]o commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the State or county may be concerned." 55 ILCS 5/3-9005(a)(1) (West 2010). The power of the Attorney General may be exercised concurrently with, or independently of, the power of the State's Attorney to initiate and prosecute all actions, suits, indictments, and prosecutions in his county as conferred by statute. 15 ILCS 205/4 (West 2010). The Attorney General lacks the power to take exclusive charge of the prosecution of those cases over which the State's Attorney shares authority. *People v. Buffalo Confectionery Co.*, 78 Ill. 2d 447, 455 (1980). Because State's Attorneys have the power to prosecute criminal cases in the counties in which they are elected, the State's Attorney of Marion County had authority over Cunningham's prosecution.

¶ 15 In sum, the circuit court of Marion County had personal jurisdiction over Cunningham and had subject matter jurisdiction over his case, and no postconviction occurrence entitles Cunningham to release. As such, Cunningham's *habeas corpus* complaint did not "show upon its face" that he is entitled to discharge. Accordingly, the circuit court's dismissal of the complaint pursuant to section 2-615 was proper.

¶ 16 For the foregoing reasons, we affirm the order of the circuit court of Randolph County dismissing Cunningham's *habeas corpus* complaint.

¶ 17 Affirmed.