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2014 IL App (3d) 130729-U

Order filed October 30, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

PAUL MCLENNAN,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit
Plaintiff-Appellant,	)	Henry County, Illinois
	)	
v.	)	Appeal No. 3-13-0729
	)	Circuit No. 07CF349
	)	
MARVIN REED, WARDEN,	)	
JACKSONVILLE CORRECTIONAL	)	Honorable
CENTER,	)	Larry S. Vandersnick
	)	Ted J. Hamer,
Defendant-Appellee.	)	Judges, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Holdridge and Schmidt concurred in the judgment.

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**ORDER**

*Held:* Trial court did not err when it dismissed defendant's complaint for *habeas corpus* relief, finding there was no basis upon which relief could be granted.

¶ 1 Defendant Paul McLennan filed a *habeas corpus* complaint alleging that his 2008 conviction for cannabis trafficking was unconstitutional based on an unlawful search and seizure of his motor home. The State moved to dismiss, which the trial court granted. We affirm.

¶ 2 **FACTS**

¶ 3 In 2008, McLennan was convicted of cannabis trafficking (720 ILCS 550/5.1 (West 2006)) and sentenced to a 14-year term of imprisonment. His conviction and sentence were affirmed on direct appeal, where this court found that the trial court did not err in denying the motion to suppress evidence filed by McLennan in the trial court. *People v. McLennan*, No. 3-08-0988 (2010) (unpublished order under Supreme Court Rule 23). This court also affirmed the trial court’s summary dismissal of McLennan’s postconviction petition, in which he argued he was denied effective assistance of counsel and the right to counsel. *People v. McLennan*, No. 3-11-0248 (2012) (unpublished order under Supreme Court Rule 23).

¶ 4 On August 19, 2013, McLennan filed the instant complaint for *habeas corpus* relief, alleging that his sentence was unlawful and void because it violated his rights to due process, equal protection and effective assistance of counsel. The State moved to dismiss, arguing that the issues in the complaint had been previously addressed or were waived and that the complaint failed to allege a defect entitling McLennan to *habeas corpus* relief. The trial court granted the State’s motion to dismiss. It found that the *habeas corpus* complaint was a rehash of the arguments raised in McLennan’s motion to suppress; that the issues raised had been affirmed on appeal; and that McLennan was not wrongly imprisoned. He moved for reconsideration of the dismissal, which the trial court denied. McLennan appealed.

¶ 5 ANALYSIS

¶ 6 The issue we consider is whether the trial court erred in dismissing McLennan’s complaint for *habeas corpus*. McLennan argues that the trial court improperly and untimely *sua sponte* dismissed the complaint. He also argues on the merits that because his motion to suppress should have been granted, his continued detention is unlawful.

¶ 7 *Habeas corpus* relief may only be granted on the statutory grounds set forth in the Habeas Corpus Act. 735 ILCS 5/10-124 (West 2012); *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008). These grounds include lack of jurisdiction or where a subsequent occurrence to the prisoner's conviction entitles him to release. *Beacham*, 231 Ill. 2d at 58. A *habeas corpus* complaint may not be used to review proceedings that do not include one of the statutory defects, even if the error alleges a constitutional violation. *People v. Gosier*, 205 Ill. 2d 198, 205 (2001). A trial court may *sua sponte* dismiss a *habeas corpus* complaint where it is insufficient on its facts to warrant any available relief. *Hennings v. Chandler*, 229 Ill. 2d 18, 26-27 (2008). We review the trial court's dismissal of a *habeas corpus* complaint *de novo*. *Adcock v. Snyder*, 345 Ill. App. 3d 1095, 1098 (2004).

¶ 8 McLennan alleged in his *habeas corpus* complaint that the trial court improperly dismissed his complaint *sua sponte* and prematurely. His allegations are without merit. The trial court dismissed the complaint on the State's motion to dismiss. Dismissal was not *sua sponte*, nor was it premature. McLennan relies on *People v. Laugharn*, 233 Ill. 2d 318 (2009) to support his argument that dismissal was premature. *Laugharn* concerned a postjudgment motion filed under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). *Laugharn*, 233 Ill. 2d at 320. Response to a section 2-1401 petition must be filed within 30 days of the filing of the petition. *People v. Gray*, 2011 IL App (1st) 091689, ¶ 22. *Laugharn* does not aid McLennan.

¶ 9 McLennan also alleged that his detention was unlawful because his conviction was based on an unconstitutional search of his vehicle. McLennan did not raise any issues regarding jurisdiction or a postconviction occurrence that entitled him to immediate release. McLennan's claims that he was subjected to an unconstitutional stop and search

are not cognizable in a *habeas corpus* complaint. The trial court did not err in dismissing his complaint.

¶ 10 For the foregoing reasons, the order of the circuit court of Henry County dismissing McLennan's complaint for *habeas corpus* relief is affirmed.

¶ 11 Affirmed.