



¶ 2 The plaintiff, Charles Bruce Thomas, is currently incarcerated at Pinckneyville Correctional Center, where he is in the custody of the defendant, Tom Spiller, the warden of the facility. The plaintiff appeals the circuit court's dismissal of his *habeas corpus* complaint. He asks this court to reverse the circuit court's judgment and order further proceedings on this matter. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Following a jury trial, the plaintiff was found guilty of 2 counts of first-degree murder and was sentenced to 2 concurrent terms of 60 years' imprisonment. This court affirmed the plaintiff's conviction on direct appeal in *People v. Thomas*, No. 5-99-0220 (2000) (unpublished order pursuant to Illinois Supreme Court Rule 23). On December 27, 2000, the plaintiff filed a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2000)), which he later amended. On April 7, 2003, the circuit court granted the State's motion to dismiss the plaintiff's second amended petition without affording him an evidentiary hearing. This court affirmed that dismissal in *People v. Thomas*, No. 5-03-0256 (2004) (unpublished order pursuant to Illinois Supreme Court Rule 23).

¶ 5 The plaintiff then filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2006)). The circuit court summarily dismissed the petition, finding that it was a successive postconviction petition. This court affirmed in *People v. Thomas*, No. 5-07-0486 (2010) (unpublished order pursuant to Illinois Supreme Court Rule 23). On December 3, 2010, the plaintiff filed another *pro se* petition for relief from judgment pursuant to section 2-

1401 of the Code (735 ILCS 5/2-1401 (West 2010)). The circuit court dismissed that petition, and this court affirmed in *People v. Thomas*, No. 5-11-0292 (2013) (unpublished order pursuant to Illinois Supreme Court Rule 23).

¶ 6 On July 13, 2013, the plaintiff filed the instant complaint for *habeas corpus* pursuant to section 10-124 of the Code (735 ILCS 5/10-124 (West 2012)), arguing that he was entitled to immediate release because his conviction was void in that (1) the charges in the indictment used a disjunctive "or" and therefore did not set forth the offense with the certainty required by both the Illinois Constitution and the federal constitution, and (2) his attorneys at trial were licensed in Missouri and not Illinois at the time that they represented him. The defendant filed a motion to dismiss the complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)). The circuit court granted the defendant's motion to dismiss. The plaintiff filed a motion to reconsider, which the circuit court denied. This appeal followed.

¶ 7 ANALYSIS

¶ 8 On appeal, the plaintiff argues only that he is entitled to *habeas corpus* relief because the circuit court of Jefferson County lacked jurisdiction when it convicted him of first-degree murder when the charges were phrased in the alternative, using a disjunctive "or," and thus rendering the indictment unclear.

¶ 9 A motion to dismiss under section 2-615 of the Code admits all well-pleaded facts and tests the legal sufficiency of the complaint. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). We review a ruling on a section 2-615 motion *de novo*. *Id.* We construe the allegations of the complaint in the light most favorable to the plaintiff.

*Beacham v. Walker*, 231 Ill. 2d 51, 57-58 (2008). However, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action. *Id.*

¶ 10 *Habeas corpus* relief is a narrow remedy that is available in limited circumstances. *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125 (2006). "The sole remedy or relief authorized by a writ of *habeas corpus* is the prisoner's immediate release from custody." *Id.* The remedy is available only if (1) the circuit court lacked jurisdiction to enter judgment, or (2) some postconviction occurrence entitles the inmate to immediate release from custody. *People v. Gosier*, 205 Ill. 2d 198, 205 (2001). A *habeas* complaint may not be used to review proceedings that do not allege one of the aforementioned defects, even if the alleged error involves a denial of a constitutional right. *Id.*

¶ 11 Subject matter jurisdiction is conferred on the circuit courts by the Illinois Constitution. *People v. Gilmore*, 63 Ill. 2d 23, 26 (1976). The circuit court obtains subject matter jurisdiction when the State 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 (2002). Personal jurisdiction over a criminal defendant is conferred upon the circuit court when the defendant personally appears before it. *People v. Raczkowski*, 359 Ill. App. 3d 494, 497 (2005). Jurisdiction is not conferred by information or indictment, but rather by constitutional provisions. *People v. Benitez*, 169 Ill. 2d 245, 256 (1996). A charging instrument that fails to charge an offense does not divest the circuit court of jurisdiction. *Id.* A defective indictment is not a proper ground for *habeas corpus* relief. *Watkins v. Page*, 322 Ill. App. 3d 360, 366 (2001).

¶ 12 *Habeas corpus* relief is also available if some postconviction occurrence requires the immediate release of the prisoner from custody. *Gosier*, 205 Ill. 2d at 205. Thus, *habeas* relief is available when the time during which the plaintiff can be legally detained has expired. *Faheem-El v. Klinicar*, 123 Ill. 2d 291, 295 (1988).

¶ 13 Here, the circuit court obtained subject matter jurisdiction over the plaintiff when the State filed charges against him and personal jurisdiction when the plaintiff appeared before the court. The circuit court did not lose jurisdiction over the plaintiff because the indictment was phrased in the alternative, as indictments do not confer or divest a circuit court's jurisdiction. Even if the indictment had been unclear, in contravention of the federal and state constitutions, a *habeas corpus* complaint is not the proper vehicle to allege such violations. The plaintiff has failed to show that the circuit court lacked jurisdiction to convict him. The plaintiff does not argue that he is being held in custody past the time his sentence has expired, nor would such an argument be valid. The plaintiff was sentenced to 60 years' imprisonment 15 years ago. The plaintiff has not completed his sentence, and thus no argument can be made that some postconviction occurrence entitles the plaintiff to immediate release from custody.

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, the judgment of the circuit court of Perry County is affirmed.

¶ 16 Affirmed.