

**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).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

ANTOINE LAMB,	)	Appeal from the Circuit Court
	)	of Lake County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 09-CF-1720
	)	
THE PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	Honorable
	)	Daniel B. Shanes,
Respondent-Appellee.	)	Judge, Presiding.

---

JUSTICE HUDSON delivered the judgment of the court.  
Justices Jorgensen and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in *sua sponte* denying prisoner’s petition for an order of *habeas corpus* because prisoner did not allege claims for which *habeas corpus* relief could be granted.

¶ 2 Petitioner, Antoine D. Lamb, appeals *pro se* from the judgment of the circuit court of Lake County *sua sponte* dismissing his *pro se* petition for an order of *habeas corpus*.<sup>1</sup> On

---

<sup>1</sup> Lamb labeled his petition as a “state writ” for *habeas corpus*. However, as the supreme court noted in *Hennings v. Chandler*, 229 Ill. 2d 18, 25 n.3 (2008), Article X of the Code of Civil Procedure, the provision under which Lamb filed his petition, now refers to “orders” of *habeas*

appeal, Lamb argues that the trial court erred in denying his request for *habeas corpus* relief because: (1) the indictment underlying his convictions was defective, thereby depriving the court overseeing his case of subject matter jurisdiction and (2) his sentence of imprisonment had “expired,” thereby rendering his continued incarceration illegal. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 In May 2009, Lamb was charged in a five-count indictment with criminal sexual assault and aggravated criminal sexual abuse against his then-girlfriend’s minor daughter. Count I of the indictment charged criminal sexual assault by use of force (720 ILCS 5/12-13(a)(1) (West 2008), now codified at 720 ILCS 5/11-1.20(a)(1) (West 2018)). Count II charged criminal sexual assault while holding a position of authority relative to the victim (720 ILCS 5/12-13(a)(4) (West 2008) now codified at 720 ILCS 5/11-1.20(a)(4) (West 2018)). Count III charged aggravated criminal sexual abuse in that Lamb committed an act of sexual conduct with the victim, who was at least 13 years of age but under 17 years of age, in that Lamb knowingly touched the victim’s buttock with his hand for the purpose of Lamb’s sexual gratification and Lamb was at least 5 years older than the victim (720 ILCS 5/12-16(d) (West 2008) now codified at 720 ILCS 5/12-1.60(d) (West 2018)). Count IV charged aggravated criminal sexual abuse in that Lamb committed an act of sexual penetration with the victim, who was at least 13 years of age but under 17 years of age, in that Lamb knowingly touched the victim’s vagina with his penis and Lamb was at least 5 years older than the victim (720 ILCS 5/12-16(d) (West 2008) now codified at 720 ILCS 5/12-1.60(d) (West 2018)). Count V charged aggravated criminal *corpus*, rather than “writs.” See 735 ILCS 5/2-1501 (West 2016) (“Writs abolished”); see also, *e.g.*, 735 ILCS 5/10-107 (West 2016) (“Form of orders”). Therefore, we will refer to Lamb’s filing as a petition for an “order” of *habeas corpus*.

sexual abuse in that Lamb, who was 17 years of age or older and held a position of authority in relation to the victim, committed an act of sexual conduct with the victim, who was at least 13 years of age but under 18 years of age, in that Lamb knowingly touched the victim's buttock with his hand for the purpose of Lamb's sexual gratification (720 ILCS 5/12-16(f) (West 2008) now codified at 720 ILCS 5/12-1.60(f) (West 2018)). Counts III and V were nolle prossed prior to trial. In May 2010, a jury found Lamb guilty of counts I, II, and IV. At a sentencing hearing held in July 2010, the trial court found that all three counts merged. The court sentenced Lamb to seven years' imprisonment on the criminal sexual assault count based on use of force. The court also imposed a term of mandatory supervised release (MSR) of three years to natural life pursuant to section 5-8-1(d)(4) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-1(d)(4) (West 2008)). The written sentencing judgment required Lamb to serve 85% of his sentence. This court affirmed Lamb's conviction and sentence on direct appeal. *People v. Lamb*, 2012 IL App (2d) 100796-U.

¶ 5 On February 20, 2013, Lamb filed a *pro se* petition seeking relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)) alleging (1) a denial of his rights under the sixth amendment to the United States Constitution (U.S. Const., amend. VI), (2) ineffective assistance of trial counsel, and (3) errors by the trial court in seating a juror who was allegedly not impartial and failing to conduct a hearing on a pretrial motion to suppress statement. On May 7, 2015, the trial court granted the State's motion to dismiss Lamb's petition at the second stage of the postconviction process. On appeal, this court affirmed the dismissal. *People v. Lamb*, 2017 IL App (2d) 150579-U.

¶ 6 On December 5, 2017, Lamb filed a *pro se* petition for an order of *habeas corpus* in the circuit court of Lake County. Lamb claimed that he was being unlawfully incarcerated at the

Taylorville Correctional Center on two separate grounds.<sup>2</sup> Specifically, Lamb alleged in paragraph 15 of the petition as follows:

“15. I believe that I am being held unlawfully on the following grounds:

(A) Ground one: I was sentenced to 7 years and continue to be held until I find somewhere to parole to myself [*sic*], Completed maximal sentence one year and seven months ago, Held in violation of Article 1 Section 11 (Illinois Constitutional Rights)

(B) Ground two: Multiplicity Indictment by being charged twice with holding a position of trust/authority and force in violation of U.S. Constitution Fifth Amendment.”

¶ 7 In a written decision filed on February 21, 2018, the trial court *sua sponte* found that Lamb’s petition was insufficient on its face to warrant relief. With respect to Lamb’s first ground of unlawful incarceration, the court explained that because a prisoner sentenced to MSR pursuant to section 5-8-1(d)(4) of the Unified Code (730 ILCS 5/5-8-1(d)(4) (West 2016)) continues in the custody of the Department of Corrections (730 ILCS 5/3-14-2.5 (West 2016)), the time during which he or she can be legally detained does not terminate until the term of MSR expires. *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 431 (1998). Since Lamb is serving a term of MSR, the court concluded that *habeas corpus* relief is not available to him. Regarding Lamb’s second ground of unlawful incarceration, the court concluded that the allegation of error in the charges against him do not meet the criteria of a claim eligible for *habeas corpus* relief.

---

<sup>2</sup> The proper respondent in a *habeas corpus* proceeding is the person in whose custody or under whose restraint the prisoner resides. 735 ILCS 5/10-107 (West 2016); *Hennings*, 229 Ill. 2d at 23-24 n.2. Although the caption of the petition lists the “People of the State of Illinois” as the respondent, Lamb identified Kimberly Smith, the warden of the Taylorville Correctional Center, as the respondent in the body of his petition.

Accordingly, the court “dismissed” the petition.<sup>3</sup> On March 13, 2018, defendant filed a notice of appeal.

¶ 8

## II. ANALYSIS

¶ 9 On appeal, Lamb argues that the trial court erred in denying his *pro se* petition for *habeas corpus* relief because: (1) the indictment underlying his convictions was defective, thereby depriving the court overseeing his case of subject matter jurisdiction; and (2) his sentence of imprisonment had “expired,” thereby rendering his continued incarceration illegal. We hold that the trial court properly denied Lamb’s petition as the claims he raises are not cognizable in a *habeas corpus* proceeding.

¶ 10 *Habeas Corpus* is a narrow remedy that is available only 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.” *Faircloth*, 367 Ill. App. 3d at 125. Section 10-124 of the Code of Civil Procedure (735 ILCS 5/10-124 (West 2016)) sets forth seven grounds upon which a prisoner may be granted *habeas corpus* relief. *Barney*, 184 Ill. 2d at 430. These seven grounds fall into two general categories and permit a prisoner to obtain release under *habeas corpus* if: (1) he or she has been incarcerated under a judgment of a court that lacked personal or subject matter jurisdiction; or (2) there has been an occurrence subsequent to the prisoner’s conviction entitling him or her to release. *Hennings*, 229

---

<sup>3</sup> In *Hennings*, 229 Ill. 2d at 22 n.1, the supreme court stated that when a circuit court *sua sponte* enters a judgment on a petition for *habeas corpus* relief, the circuit court’s action is properly referred to as a “denial” of relief rather than a “dismissal.” In keeping with this guidance, we will refer to the circuit court’s action in this case as entering judgment *sua sponte* by “denying” Lamb’s request for *habeas corpus* relief.

Ill. 2d at 30; *People v. Gosier*, 205 Ill. 2d 198, 205 (2001). Serving more than the maximum imposed sentence is an example of a subsequent event that might entitle a prisoner to *habeas corpus* relief. *Faircloth*, 367 Ill. App. 3d at 125. If a prisoner's claim does not fall within either of the aforementioned categories, *habeas corpus* relief is inappropriate even if the prisoner alleges a denial of his or her constitutional rights. *Gosier*, 205 Ill. 2d at 205. A trial court has the authority to *sua sponte* deny a petition if the complaint and any attached documents show that the prisoner cannot possibly obtain *habeas corpus* relief. *Beacham v. Walker*, 231 Ill. 2d 51, 59 (2008); *Hennings*, 229 Ill. 2d at 32. We review *de novo* the trial court's denial of a petition for an order of *habeas corpus*. *Adcock v. Snyder*, 345 Ill. App. 3d 1095, 1098 (2004) (noting that the legal sufficiency of a *habeas corpus* petition is an issue of law subject to *de novo* review).

¶ 11 Lamb first contends that the trial court erred in denying his petition because he was charged in a “multiplicity indictment,” thereby depriving the trial court overseeing his case of subject matter jurisdiction. Lamb defines “multiplicity” as “the improper charging of the same offense in more than one count of a single indictment or information.” According to Lamb, four of the five counts presented to the grand jury charged him with “(2) counts holding a position of trust/authority \*\*\* [and] (2) counts, 5 years older now.” Thus, he contends, he was charged with “[two] sets, exposing him to multiple punishments for the same offense in violation of the Double Jeopardy Clause of the Fifth Amendment.” Lamb asserts that without a proper indictment, the judgment below “has to be null and void for lack of subject matter.” Lamb's claim lacks merit.

¶ 12 Subject matter jurisdiction refers to the power of the court to adjudge concerning the general question involved, as well as the power to grant the particular relief requested. *In re M.M.*, 156 Ill. 2d 53, 64 (1993). In Illinois, subject matter jurisdiction is not conferred by

information or indictment, but rather by constitutional provisions. *People v. Benitez*, 169 Ill. 2d 245, 256 (1996); *M.M.*, 156 Ill. 2d at 64; *People v. Gilmore*, 63 Ill. 2d 23, 26 (1976). The Illinois Constitution grants circuit courts original jurisdiction over all “justiciable matters.” Ill. Const. 1970, art. VI, § 9 (“Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office.”). A trial court therefore acquires subject matter jurisdiction when the State creates a justiciable controversy by leveling criminal charges against the accused and filing them with the court. *People v. Woodall*, 333 Ill. App. 3d 1146, 1156 (2002). Consequently, a charging instrument that fails to charge an offense does not divest the circuit court of jurisdiction (*People v. Hughes*, 2012 IL 112817, ¶ 28; *Benitez*, 169 Ill. 2d at 256), and a defective indictment is not a proper ground for *habeas corpus* relief (*Benitez*, 169 Ill. 2d at 256; *Watkins v. Page*, 322 Ill. App. 3d 360, 364 (2001)).

¶ 13 In this case, the trial court obtained subject matter jurisdiction when the State created a justiciable controversy by bringing criminal charges against Lamb as set forth in the five-count indictment filed with the court. Even if the indictment filed by the State was “multiplicious,” as Lamb contends, or otherwise defective, the court would not have been divested of subject matter jurisdiction. See *Hughes*, 2012 IL 112817, ¶ 28; *Benitez*, 169 Ill. 2d at 256; *Page*, 322 Ill. App. 3d at 364. As such, Lamb’s petition for an order of *habeas corpus* was deficient on its face to show that defendant was entitled to relief on the basis the trial court lacked subject matter jurisdiction.

¶ 14 Alternatively, Lamb argues that the trial court erred in denying his petition because his sentence of imprisonment had “expired,” thereby rendering his continued incarceration illegal. In support of this argument, Lamb disputes the trial court’s finding that that his continued

incarceration was authorized by section 5-8-1(d)(4) of the Unified Code (730 ILCS 5/5-8-1(d)(4) (West 2008)). Rather, Lamb contends, MSR “is simply an alternative method by which a prisoner may complete his sentencing, not a continuation of his sentence.” Lamb also claims that section 5-8-1(d)(4), which requires defendants who commit certain sex offenses to serve an MSR term of three years to natural life, is ambiguous, thereby requiring application of the rule of lenity, and that an MSR term of three years to natural life is excessive. Lamb’s arguments here also lack merit.

¶ 15 Lamb’s claim that his sentence had “expired” is simply incorrect. As the trial court correctly observed, since a prisoner sentenced to MSR pursuant to section 5-8-1(d)(4) of the Unified Code (730 ILCS 5/5-8-1(d)(4) (West 2008)) continues in the custody of the Department of Corrections (730 ILCS 5/3-14-2.5 (West 2008)), the time during which he or she can be legally detained does not terminate until the term of MSR expires. *Barney*, 184 Ill. 2d at 431; see also *Newsome v. Hughes*, 131 Ill. App. 3d 872, 875 (1985). In this case, Lamb was sentenced on one count of criminal sexual assault to a term of seven years’ imprisonment followed by a term of MSR of three years to natural life. Thus, even if Lamb completed his determinate sentence of imprisonment, his term of MSR has not expired. See *Taylor v. Cowan*, 339 Ill. App. 3d 406, 410 (2003) (“A prisoner is not entitled to a discharge from prison until his mandatory supervised release is served, because mandatory supervised release is a part of a sentence.”). That Lamb has not been released on MSR because a suitable host site is not available, as suggested in his petition, does not alter the analysis. See *Lucas v. Department of Corrections*, 2012 IL App (4th) 110004, ¶ 15 (holding that the Prisoner Review Board properly determined that prisoner could not be released on MSR without a suitable residence for electronic monitoring). Since Lamb has not served his maximum sentence, including his MSR



term, he has failed to establish cause for discharge under section 10-124 and the trial court properly denied his request for *habeas corpus* relief.

¶ 16 Moreover, Lamb's remaining arguments are barred by *res judicata*. *Res judicata* precludes consideration of issues that were raised and decided on direct appeal. *People v. Terry*, 2012 IL App (4th) 100205, ¶ 29. Three requirements must be satisfied for *res judicata* to apply: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of cause of action; and (3) an identity of parties or their privies. In Lamb's direct appeal, this court, citing *People v. Rinehart*, 2012 IL 111719, rejected the argument that by enacting section 5-8-1(d)(4) of the Unified Code (730 ILCS 5/5-8-1(d)(4) (West 2008)), the legislature did not intend to impose terms of indeterminate mandatory supervised release for certain sex offenses. *Lamb*, 2012 IL App (2d) 100796-U, ¶ 64 (citing *Rinehart*, 2012 IL 111719, ¶ 30). Accordingly, the doctrine of *res judicata* operates to bar consideration of Lamb's claim that he was incorrectly sentenced to an indeterminate term of MSR.

¶ 17

### III. CONCLUSION

¶ 18 For the reasons set forth above, Lamb has failed to establish a cause for discharge under section 10-24 of the Code of Civil Procedure (735 ILCS 5/10-24 (West 2016)). Accordingly, we affirm the judgment of the circuit court of Lake County denying Lamb's *pro se* petition for an order of *habeas corpus*. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2018); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 19 Affirmed.