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2018 IL App (3d) 160664-U

Order filed February 26, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

JAVIER BAILEY,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois.
)	
v.)	Appeal No. 3-16-0664
)	Circuit No. 15-MR-1347
RANDY PFISTER, Warden, ¹)	
)	Honorable
Defendant-Appellee.)	Cory D. Lund,
)	Judge, presiding.

PREDISING JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing plaintiff *habeas corpus* complaint.

¶ 2 Plaintiff, Javier Bailey, filed a *pro se* complaint for *habeas corpus* relief. The trial court dismissed the complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735

¹ Randy Pfister replaced the originally named defendant, Tarry Williams, as the warden of the Stateville Correctional Center, where the plaintiff is incarcerated. Pursuant to section 10-107 of the Code of Civil Procedure (735 ILCS 5/10-107) (West 2016)), Pfister is substituted as the named defendant because he is plaintiff's current custodian. 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).

ILCS 5/2-619 (West 2016)) and denied defendant's request for sanctions. Bailey filed a motion to reconsider. The trial court denied the motion to reconsider and imposed sanctions for Bailey having filed a frivolous motion. On appeal, Bailey argues the trial court erred in dismissing his complaint. We affirm.

¶ 3

FACTS

¶ 4

In 2005, Bailey entered a negotiated plea of guilty to one count of aggravated sexual assault in exchange for a sentence of 25 years of imprisonment. Bailey filed a *pro se* postplea motion to dismiss/reduce sentence, which was denied by the trial court, and Bailey appealed. *People v. Bailey*, No. 1-05-3854 (2007) (unpublished order under Supreme Court Rule 23). The appellate court summarily remanded the case because Bailey's waiver of postplea counsel was unclear. *Id.* On remand, the trial court again denied Bailey's postplea motion, and Bailey appealed, arguing that the trial court's guilty plea admonishments regarding mandatory supervised release (MSR) and registration requirements as a sexual predator were insufficient. *People v. Bailey*, No. 1-07-3075 (2009) (unpublished order under Supreme Court Rule 23), *vacated*, 236 Ill. 2d 510 (2010)). The appellate court held that the trial court's guilty plea admonishments were sufficient and affirmed Bailey's conviction. *Id.* Bailey filed a petition for leave to appeal, and the Illinois Supreme Court directed the appellate court to vacate its order and reconsider its decision in light of *People v. Morris*, 236 Ill. 2d 345, 366-68 (2010) (requiring the trial court to advise a defendant that a MSR term will be added to a sentence that was negotiated in exchange for a guilty plea). *People v. Bailey*, 236 Ill. 2d 510 (2010) (table)). On remand, the appellate court again affirmed Bailey's conviction. *People v. Bailey*, No. 1-07-3075 (2010) (unpublished order under Supreme Court Rule 23). The Illinois Supreme Court denied

Bailey's subsequent petition for leave to appeal on November 24, 2010. *People v. Bailey*, 238 Ill. 2d 655 (2010) (table).

¶ 5 While Bailey's direct appeal was pending, he filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2008)). In the petition, Bailey argued: (1) his fourth amendment rights were violated because there was an improper delay between his arrest and the probable cause hearing; (2) his conviction was void because the criminal complaint had not been signed; (3) he received ineffective assistance of counsel; and (4) there were issues of prosecutorial misconduct of procuring perjured testimony during the grand jury proceedings. *People v. Bailey*, No. 1-09-2088 (2010) (unpublished order under Supreme Court Rule 23). The trial court denied defendant's section 2-1401 petition, finding that Bailey failed to allege sufficient facts to indicate that he had a meritorious defense. *Id.* Bailey appealed, and the appellate court affirmed the denial of Bailey's section 2-1401 petition, finding no issues of arguable merit and granting the motion of defendant's counsel for leave to withdraw pursuant to *Pennsylvania v. Finely*, 481 U.S. 551 (1987). *Bailey*, No. 1-09-2088.

¶ 6 Subsequently, in federal court, Bailey filed a *pro se* petition for *habeas corpus* relief. *United States ex rel. Bailey v. Hardy*, No. 11 C 5650, 2012 WL 182237, at *1 (N.D. Ill. Jan. 23, 2012). In the federal *habeas corpus* petition, Bailey argued that his conviction should be vacated because: (1) there was a 78-hour delay in him being brought before a judge for a probable cause determination following his warrantless arrest; (2) an improperly executed criminal complaint deprived the trial court of subject matter jurisdiction; (3) the grand jury indictment was void because of prosecutorial misconduct; and (4) he received ineffective assistance of counsel. *Id.* at *2. The federal district court noted that a claim for federal *habeas corpus* relief would be

procedurally defaulted if Bailey had not fairly presented the operative facts and law of his claims at each state court level and found that Bailey had, “completed every round of review in the state courts, exhausting his state court remedies.” *Id.* at *3. Specifically, the federal district court found that it was precluded from reviewing Bailey’s claim regarding the 78-hour delay in Bailey being brought before a judge for a probable cause determination, although a delay of more than 48 hours was presumptively unreasonable, because Bailey had a full and fair opportunity to litigate the matter before the state courts and there was no indication that the Illinois courts did not fairly consider Bailey’s arguments. *Id.* at *3-4. The federal district court noted that Bailey had raised the issue in a pretrial motion to suppress and the trial judge had concluded the delay was reasonable in light of the two ongoing sexual assault investigations involving Bailey and that Bailey had also raised the issue in his section 2-1401 petition “to no avail.” *Id.* at *3. The federal district court also noted that on appeal from the denial of his section 2-1401 petition, Bailey’s appellate counsel had argued there was no arguable merit to Bailey’s issue regarding the 78-hour delay in bringing him for a probable cause hearing because the remedy for any violation was not to vacate Bailey’s conviction or automatically suppress his statements but, rather, to consider the delay in assessing the voluntariness of Bailey’s statements. *Id.* at *3, 7. The federal district court additionally noted that Bailey had an opportunity to address the issue regarding the delay in his response to his appellate counsel’s *Finley* motion and again in his petition for leave to appeal to the Illinois Supreme Court. *Id.* at *3. The federal district court did not reach the merits of Bailey’s federal due process claim based on his claim of an unsigned criminal complaint because Bailey had not presented the issue as a federal due process claim at each level of review in the state courts but had argued the issue in the context of the state’s requirements for preliminary hearings and jurisdiction. *Id.* at *4. The federal district court also noted that an

unsigned complaint was used to determine whether probable cause existed following Bailey's warrantless arrest but once the indictment was subsequently filed, it rendered any errors in the probable cause determination inconsequential and any challenge to the pre-indictment probable cause determination would not have resulted in Bailey's conviction becoming invalid. *Id.* at *7. The federal district court addressed Bailey's argument that the circuit court lacked subject matter jurisdiction because the sole grand jury witness, Detective Phil Santefort, had allegedly lied about being personally involved in the investigation, with the prosecutor aware of the lie, and because Santefort's name was not on the indictment where grand jury witnesses were to be listed. *Id.* at *5. The federal district court found that Bailey had properly exhausted the issue of the grand jury indictment in state court, concluded that a defective indictment did not deprive the court of subject matter jurisdiction, and noted that if the grand jury's probable cause determination was deficient, Bailey's later admission of guilt to the charges was conclusive evidence of his guilt and rendered any probable cause determination irrelevant. *Id.* The federal district court also indicated that any errors in listing the witnesses on the bill of indictment did not require dismissal of the indictment absent substantial prejudice to Bailey and Bailey could not show prejudice. *Id.* at *7. The federal district court further concluded that none of the errors alleged by Bailey affected the state court's subject matter jurisdiction or personal jurisdiction, noting subject matter jurisdiction was conferred by the Illinois Constitution, not the indictment, the circuit court had subject matter jurisdiction because the alleged sexual assault occurred in Illinois, and the circuit court had acquired personal jurisdiction over Bailey once he appeared before the court, regardless of any errors in his arrest, detention, or indictment. *Id.* The federal district court denied Bailey's petition for *habeas corpus* relief. *Id.*

¶ 7 On June 5, 2015, Bailey filed a *pro se* complaint for *habeas corpus* relief in state court. In the complaint, Bailey argued that his conviction was void because the trial court lacked subject matter jurisdiction and personal jurisdiction due to the initial criminal complaint not being signed. Defendant filed a motion to dismiss the *habeas corpus* complaint, arguing, *inter alia*, that Bailey’s claim was barred by collateral estoppel under section 2-619(a)(4) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(4) (West 2016)). Defendant also requested that sanctions be imposed against Bailey. The trial court granted defendant’s motion to dismiss pursuant to section 2-619 of the Code, but declined to impose sanctions. Bailey filed a motion for the trial court to reconsider its ruling. The trial court denied Bailey’s motion to reconsider and indicated that Bailey had raised the same arguments in postconviction petitions at the trial and appellate levels and in federal court, all to no avail. The trial court noted that Bailey’s motion to reconsider did not argue newly discovered evidence, changes in the law, or errors in the previous application of the law but reasserted the same arguments and wasted the court’s time with arguments that Bailey “must have known were frivolous because he ha[d] been told now three times by three different court were not sufficient to obtain relief.” On its own motion, the circuit court sanctioned Bailey in the amount of \$100 for bringing a frivolous motion for reconsideration. Defendant appealed.

¶ 8 ANALYSIS

¶ 9 On appeal, Bailey argues that the trial court erred in dismissing his complaint for *habeas corpus* relief. Bailey contends that the unsigned criminal complaint that was the basis for his arrest was invalid and, therefore, the trial court did not have subject matter jurisdiction over the case or personal jurisdiction over him. Bailey additionally complains that the trial court could not have obtained subject matter jurisdiction or personal jurisdiction over him because he was

improperly detained for 78 hours, during which time he was tortured, before he was brought before a judge for a probable cause hearing, and the grand jury indictments were fraudulently obtained and based upon perjured testimony. In response, defendant argues that the trial court properly dismissed Bailey's complaint pursuant to section 2-619(a)(4) of the Code (735 ILCS 6/2-619(a)(4) (West 2016)) as being barred by the doctrine of collateral estoppel because Bailey's challenges to the trial court's jurisdiction were previously denied. Defendant also argues this court may affirm the trial court's dismissal of Bailey's *habeas corpus* complaint in this case pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)) because the complaint failed to state a claim for *habeas corpus* relief.

¶ 10 A writ of *habeas corpus* is available only to obtain the immediate release of a prisoner who has been incarcerated under a judgment of a court that lacked subject matter or personal jurisdiction over the plaintiff's person, or where there has been an occurrence subsequent to the prisoner's conviction that entitles him to be immediately released. *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008). A *habeas corpus* complaint may not 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. *Freeman v. Cowan*, 331 Ill. App. 3d 218, 219 (2002).

¶ 11 A motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)) admits the legal sufficiency of the complaint but asserts that an affirmative defense defeats the complaint. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Under section 2-619, we accept all well-pleaded facts as true, with reasonable inferences that can be drawn from those facts, viewed in the light most favorable to the nonmoving party. *Wofford v. Tracy*, 2015 IL App (2d) 141220, ¶ 27. Our review of the trial court's dismissal of a complaint pursuant to section 2-619 of the Code is *de novo*. *Id.* ¶ 31. We also note that we can

affirm the circuit court's ruling on any basis supported by the record. *Cwik v. Giannoulis*, 237 Ill. 2d 409, 424 (2010).

¶ 12 The doctrine of collateral estoppel applies when a party, or someone in privity with that party, participates in two separate and consecutive cases arising upon different causes of action and some controlling fact or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389-90 (2001). The adjudication of the fact or question in the first cause is conclusive of the same question in the later suit and bars the relitigation of that question in the second case. *Id.* at 390. To establish that collateral estoppel is applicable to a claim, it must be established that: (1) the issue decided in the prior adjudication is identical to the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom the estoppel is asserted was a party or in privity with a party to the prior adjudication. *Id.*

¶ 13 Here, Bailey's challenges to the trial court's subject matter and personal jurisdiction based on his claims of an unsigned complaint, indictments obtained by perjured testimony, and an unreasonable delay in bringing him before a judge for a probable cause determination were issues previously decided on the merits in prior adjudications against Bailey. Therefore, Bailey's claims are barred by collateral estoppel and his *habeas corpus* complaint was properly dismissed by the trial court pursuant to section 2-619 of the Code.

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of Will County is affirmed.

¶ 16 Affirmed.