

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).

2018 IL App (4th) 170866-U

NO. 4-17-0866

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

FILED
June 7, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JERMAINE L. DAVIS,)	No. 11CF1525
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant failed to establish the trial court erred in dismissing his *habeas corpus* petition.

¶ 2 On October 3, 2017, defendant Jermaine L. Davis filed a petition for *habeas corpus* relief. On October 16, 2017, the trial court dismissed defendant’s petition. This appeal followed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 3, 2017, defendant filed a petition for *habeas corpus* relief pursuant to section 10-102 of the Code of Civil Procedure (735 ILCS 5/10-102 (West 2016)). According to defendant, he was incarcerated as a result of his conviction for first degree murder in case No. 11-CF-1525. Defendant alleged the trial court lacked personal jurisdiction over him because the court did not give him the opportunity to enter a plea at the arraignment hearing on September

19, 2011. Defendant stated:

“ ‘A criminal defendant confers personal jurisdiction upon the trial court when he appears and joins the issues with a plea.’ *People v. Speed*, 318 Ill. App. 3d 910, 915, *** 743 N.E.2d 1084, 1088 (2001)[,] and *People v. Woodall*, 333 Ill. App. 3d 1146 (2002). *** [A]ccordingly, the failure to ensure that a plea to the charges was made by the defendant qualifies as a fundamental defect and renders the resulting judgment as void. Where the trial court never properly acquired personal jurisdiction. This is the only way, through the arraignment procedure that the trial court can acquire personal jurisdiction legally, when a plea is entered, in the arraignment proceedings.”

Defendant then accused the trial court of attempting to “fabricate the record” by noting in a docket entry, “Defendant enters a plea of not guilty and requests trial by jury,” at a preliminary hearing held on October 7, 2011. According to defendant, a plea cannot be entered at a preliminary hearing. On October 16, 2017, the trial court dismissed defendant’s petition.

¶ 5 This appeal followed.

¶ 6 II. ANALYSIS

¶ 7 Defendant argues the trial court erred in dismissing his *habeas corpus* petition. According to defendant, his petition should not have been dismissed because the record shows he was never given the opportunity to enter a plea during the September 19, 2011, arraignment hearing. As a result, defendant argues the trial court never acquired personal jurisdiction over him in case No. 11-CF-1525, and his conviction is void. “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, 777 N.E.2d 1014, 1022 (2002). A prisoner may seek his

release via a petition for *habeas corpus* if he was convicted by a court which lacked personal jurisdiction over him. *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430, 704 N.E.2d 350, 351 (1998).

¶ 8 At defendant's arraignment hearing, which was held on September 19, 2011, the trial court informed defendant he had the right to be represented by an attorney, and if he wanted to hire his own attorney but had not yet been able to do so, he could ask for a short continuance, usually one to two weeks, to find a lawyer. The court advised defendant if he was unable to hire his own attorney, he could request a public defender to represent him free of charge. The court noted the public defender was present and would appear on defendant's behalf at that hearing if the public defender's office was appointed to represent defendant. The court told defendant:

“If you're seeking to have the Public Defender as your lawyer, if you have a charge in your case that is a felony, one of your rights is the right to have a preliminary hearing[.] If you choose to have a preliminary hearing, at that type of hearing the state's attorney would have to present evidence to show probable cause that you had committed a felony offense[.] If you choose[,] you can waive or give up your right to a preliminary hearing[.] That means that there's no preliminary hearing in your case[.] Your lawyer would enter a plea on your behalf. Your case would be set directly to a felony pretrial call[.]”

The court then told defendant he was charged with two counts of first degree murder related to the death of Russell Stokes, and, if he was found guilty, he could be sentenced to 20 to 60 years in prison with three years of mandatory supervised release (MSR).

¶ 9 After informing defendant of the pending charges, the trial court asked defendant if he wanted to hire an attorney or have the court appoint a lawyer for him. Defendant stated he

wanted a court-appointed lawyer. The court immediately appointed the public defender to represent defendant, and the public defender requested the case be set for a preliminary hearing. The court scheduled the preliminary hearing for October 7 with a pretrial hearing on November 1.

¶ 10 On October 7, 2011, the trial court held defendant’s preliminary hearing. After the State presented the testimony of Detective Dale Rawdin of the Champaign police department, the court found the State established probable cause. The transcript of this hearing does not contain the entry of defendant’s plea, but the transcript also does not reflect the court adjourned the hearing after finding probable cause. The docket entry for the October 7, 2011, hearing states:

“Pretrial order after waiver or finding of probable cause

*** Cause called for preliminary hearing. Witnesses sworn. Evidence heard. The Court having heard the evidence on preliminary hearing and being fully advised in the premises finds probable cause to believe that the Defendant has committed one or more felony offenses as charged in the information. Defendant enters a plea of not guilty and requests trial by jury. Pre-Trial Discovery Order on file. Bond to continue.”

In February 2012, a jury found defendant guilty of first degree murder. In March 2012, the trial court sentenced defendant to 60 years’ imprisonment.

¶ 11 In his *habeas corpus* petition, defendant alleged the trial court fabricated his plea at the preliminary hearing. However, he does not make that argument to this court. Instead, he argues a court cannot acquire personal jurisdiction over a defendant without the defendant entering a plea at his initial arraignment hearing. Defendant provides no authority for this specific constraint—the entry of a plea at the arraignment hearing—on the court’s ability to

