

NOTICE  
Decision filed 08/23/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 170252-U

NO. 5-17-0252

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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MARLON McCRAY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Randolph County.
	)	
v.	)	No. 17-MR-43
	)	
JACQUELINE LASHBROOK, Warden,	)	Honorable
	)	Eugene E. Gross,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE MOORE delivered the judgment of the court.  
Justices Goldenhersh and Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the complaint was insufficient on its face to warrant *habeas corpus* relief, the circuit court's dismissal of the plaintiff's *habeas corpus* complaint is affirmed.

¶ 2 The plaintiff, Marlon McCray, appeals the *sua sponte* dismissal of his *pro se* complaint for *habeas corpus*. On appeal, he argues that the circuit court erred in dismissing his complaint because the court which entered his conviction lacked jurisdiction due to an "invalid first-degree murder statute." For the following reasons, we affirm.

¶ 3

## BACKGROUND

¶ 4 On March 29, 2002, the plaintiff was indicted for first-degree murder in violation of "Chapter 720 Act 5 Section 9-1(a)(1) of the Illinois Compiled Statutes 1992 as amended." He was found guilty after a 2006 jury trial and sentenced to 60 years of incarceration. After several unproductive appeal attempts, the plaintiff filed a complaint for *habeas corpus* in May 2017. He argued that because the Illinois Compiled Statutes did not become effective until 1993, his indictment was invalid and therefore the trial court lacked jurisdiction. The circuit court dismissed the petition *sua sponte*. The plaintiff filed this timely appeal.

¶ 5

## ANALYSIS

¶ 6 On appeal, the plaintiff continues to argue that his conviction was based on a nonexistent statute and is void because his indictment cited "Chapter 720 Act 5 Section 9-1(a)(1) of the Illinois Compiled Statutes 1992 as amended," which did not take effect until 1993. Consequently, he argues, the circuit court lacked jurisdiction.

¶ 7 "It is well established that an order of *habeas corpus* is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court that lacked jurisdiction of the subject matter or the person of the petitioner, or where there has been some occurrence subsequent to the prisoner's conviction that entitles him to release." *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008) (citing *People v. Gosier*, 205 Ill. 2d 198, 205 (2001); *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430 (1998)). The circuit court may *sua sponte* dismiss a petition for a writ of *habeas corpus* that is patently nonmeritorious or insufficient on its face. *Id.* at 59; *Hennings v. Chandler*, 229 Ill. 2d 18,

24 (2008). We apply a *de novo* standard of review to the dismissal of an application for *habeas corpus*. *Hennings*, 229 Ill. 2d at 24.

¶ 8 As the plaintiff does not allege the occurrence of any postconviction event that entitles him to release, we consider only whether the allegedly defective charging instrument deprived the court of jurisdiction.

¶ 9 It has long been held that jurisdiction is not "'conferred' by the information or indictment," but instead is granted to the circuit courts by the Illinois Constitution, and that they "have jurisdiction in all cases involving offenses which fall within the ambit of section 1-5 of the Criminal Code [citation]." *People v. Gilmore*, 63 Ill. 2d 23, 26 (1976). Consequently, a defective charging instrument does not divest the court of subject matter jurisdiction. *People v. Hughes*, 2012 IL 112817, ¶ 28. Personal jurisdiction over the plaintiff is achieved by virtue of his appearance before the court (*People v. Speed*, 318 Ill. App. 3d 910, 932 (2001)).

¶ 10 In this case, the plaintiff was arrested and indicted for a violation of the Criminal Code of 1961, appeared before the court for a trial by jury, and was convicted and sentenced for the crime of first-degree murder. The circuit court had subject matter jurisdiction because of the violation of the Criminal Code and personal jurisdiction as the plaintiff appeared before it to dispute the charges against him.

¶ 11 Moreover, the plaintiff's claim that the reference to "1992" of the Illinois Compiled Statutes, instead of "1993" (when the 1992 addendums would go into effect) voids his conviction is meritless. In *People v. Suastegui*, 374 Ill. App. 3d 635 (2007), the defendant was charged with first-degree murder in violation of "Chapter 720, Act 5,

Section 9-1-A(2) of the Illinois Compiled Statutes 1992, as amended." He was convicted following a jury trial. On appeal, he argued, *inter alia*, that his conviction was based on a nonexistent statute and void because the Illinois Compiled Statutes did not become effective until January 1, 1993. The *Suastegui* court ruled that Public Act 87-1005 modified and amended the Legislative Reference Bureau Act (25 ILCS 135/1 *et seq.* (West 1992)) and replaced the organizational and numbering scheme of the Illinois Revised Statutes with the Illinois Compiled Statutes effective January 1, 1993. *Suastegui*, 374 Ill. App. 3d at 640. The court held that the defendant was properly charged with first-degree murder regardless of whether his indictment referred to the Illinois Revised Statutes or the Illinois Compiled Statutes because these were merely organizational and numbering schemes which did not change the underlying first-degree murder statute. *Id.*

¶ 12 As in *Suastegui*, the fact that the Illinois Compiled Statutes did not become effective until 1993 does not render the plaintiff's indictment or conviction void. Moreover, we note that the plaintiff's indictment occurred in 2002 and his trial occurred in 2006, well after the effective date of the Illinois Compiled Statutes. Assuming, *arguendo*, that the indictment's reference to the 1992 version of the Illinois Compiled Statutes instead of the 2002 version violated the requirement that a charging instrument set forth the statutory provision alleged to have been violated (725 ILCS 5/111-3(a)(2) (West 2002)), the plaintiff suffered no prejudice. See *People v. Melton*, 282 Ill. App. 3d 408 (1996) (posttrial claim that charging instrument cited incorrect statute does not warrant reversal unless the defendant was prejudiced by the miscitation).

¶ 13 Because the plaintiff's *habeas* complaint did not contain any set of facts that would support a finding of a jurisdictional error or postconviction event entitling him to release, the circuit court properly dismissed his complaint. *Gosier*, 205 Ill. 2d at 205.

¶ 14 **CONCLUSION**

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

¶ 16 Affirmed.