2019 IL App (3d) 170475-U

Order filed July 11, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

ALI ABDULLA,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois.
	)	
v.	)	Appeal No. 3-17-0475
	)	Circuit No. 15-MR-1401
	)	
TARRY WILLIAMS, Warden Stateville	)	
Correctional Center,	)	Honorable
	)	Arkadiusz Z. Smigielski,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The dismissal of an inmate's *habeas corpus* complaint was upheld because his claim that his conviction was void on the basis that a prior version of the attempt statute had been found unconstitutional did not allege that the trial court lacked jurisdiction of the subject matter or the person, or that there had been some occurrence subsequent to the inmate's conviction that entitled him to release.

¶ 2 The plaintiff, Ali Abdulla, an inmate, appeals the dismissal of his complaint for *habeas corpus* relief.

¶ 3 FACTS

¶ 4 The plaintiff was convicted of attempted first degree murder armed with a firearm and aggravated battery with a firearm in 2010. He was sentenced to 30 years in prison. His convictions and sentence were affirmed on direct appeal. *People v. Abdulla*, 2012 IL App (1st) 110313-U. In 2015, the plaintiff filed a complaint for *habeas corpus* relief under section 10-101 of the Code of Civil Procedure (Code) (735 ILCS 5/10-101 (West 2014)), contending that his sentence was void and he was entitled to be discharged because the legislation that created the attempt statute violated the single subject clause of the Illinois Constitution (Ill. Const. 1970, art. IV, § 8(d)). The trial court dismissed the complaint and the plaintiff appealed.

¶ 5 ANALYSIS

¶ 6 The plaintiff argues that the trial court improperly dismissed his complaint. As an initial matter, we must address our jurisdiction. There is no written order of dismissal, but the docket entry indicates that the dismissal was without prejudice. The oral ruling was that the "Motion to dismiss is granted." As the defense points out, the motion to dismiss was based on the fact that the relief sought by the plaintiff was not cognizable in *habeas corpus,* and the defense sought a dismissal with prejudice pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)). Since our review is *de novo*, and we can affirm on any basis appearing in the record, we find that the trial court granted the motion to dismiss sought by the defense and that the docket entry indicating that it was without prejudice was a clerical error. See *Nielsen-Massey Vanillas, Inc. v. City of Waukegan*, 276 Ill. App. 3d 146, 151 (1995) (appellate court may affirm a correct decision for any reason appearing in the record, regardless of the basis relied on by the trial court); *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008) (*de novo* review of an order granting a section 2-615 motion to dismiss); see also *In re K.L.S.-P.*, 381 Ill. App. 3d 194, 195 (2008)

(when a trial court's oral pronouncement conflicts with its written order, the oral pronouncement prevails).

¶ 7 Section 10-124 of the Code sets forth seven specific instances that entitle an inmate to *habeas corpus* relief. 735 ILCS 5/10-124 (West 2014). Those seven instances fall into two general categories: (1) either the trial court lacked jurisdiction of the subject matter or the person, or (2) there has been some occurrence subsequent to the inmate's conviction that entitles him to release. *People v. Gosier*, 205 Ill. 2d 198, 205 (2001). If neither of those two instances is applicable, *habeas* relief is not appropriate, even if the alleged errors involve a denial of constitutional rights. *Id.*

¶ 8 The plaintiff alleged that his conviction was void because a prior version of the attempt statute (720 ILCS 5/8-4 (West 1998)) was held to be unconstitutional because it was part of unconstitutional legislation. See *People v. Cervantes*, 189 Ill. 2d 80 (1999) (Public Act 88-680 (eff. Jan. 1, 1995), also known as the Safe Neighborhoods Law, was found to be unconstitutional because it violated the single subject requirement.). However, the attempt statute was reenacted by Public Act 91-696 (eff. Apr. 13, 2000), several years before the plaintiff committed the instant offense. The plaintiff does not allege that the trial court lacked jurisdiction or that there has been a postconviction event that would entitle him to release. Thus, the plaintiff was not entitled to *habeas corpus* relief and the complaint was properly dismissed.

¶ 9 The plaintiff raises some additional arguments on appeal. He challenges two interlocutory orders of the trial court: an order vacating the default judgment against the defendant and an order denying his motion for the appointment of counsel. The plaintiff also raises a few procedural challenges: he filed a motion for change of venue that was never ruled on; the plaintiff alleges that the defendant coordinated the plaintiff's transfer from Stateville

Correctional Center to Menard Correctional Center to keep him from court; and the plaintiff was not brought to court on two occasions. The plaintiff alleges that his constitutional rights were violated when the trial court refused to unshackle the plaintiff during a hearing, and he alleges that he has been denied access to the law library.

¶ 10 A default judgment was entered against the defendant on December 9, 2015, after proof of service had been filed, but was vacated on February 11, 2016. The trial court has discretion to set aside any default before final order or judgment. 735 ILCS 5/2-1301(e) (West 2014). Since the defendant had a meritorious defense, as evidenced by the dismissal order, substantial justice required the vacation of the default. *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 32. There was no abuse of discretion.

¶ 11 With respect to the motion for a change of venue, it was filed on the basis that the plaintiff had been moved from Will County to a prison in another county after he filed his *habeas* complaint. It does not appear to have been ruled upon, so there is no order to review. However, venue was proper at the time of filing. 735 ILCS 5/2-101 (West 2014). If the action had proceeded, it would have been appropriate to substitute the plaintiff's current custodian as the defendant. *Hennings v. Chandler*, 229 Ill. 2d 18, 23, n.2 (2008). To the extent that the plaintiff alleges that his transfers were improper under section 10-131 of the Code (735 ILCS 5/10-131 (West 2014)), that challenge fails. The plaintiff acknowledges that he was brought to court on July 14, 2017, but contends that he was not brought to court on March 10 and May 12, 2017. There were no substantive rulings on the two days that the plaintiff was not brought to court, and the plaintiff was in court on July 14, 2017, when the defendant's motion to dismiss was argued and granted.

¶ 12 The plaintiff's motion for appointment of counsel was denied because there is no right to appointed counsel in civil proceedings, such as *habeas corpus* proceedings. *Alexander v. Pearson*, 354 Ill. App. 3d 643, 645 (2004). To the extent that the plaintiff argues that he was entitled to counsel because he has been denied access to the law library while he had been in segregation, that allegation is not supported by his motion to reconsider appointment of counsel. In that motion, the plaintiff states that he has access to the law library. He complains that his time in the library, an hour and a half a week, is too limited, that there is only a part-time law librarian with no legal skills, and that he no longer has access to on-line legal research. The plaintiff does not allege that the law library was inadequate so that he was denied meaningful access to the court system. See *Bounds v. Smith*, 430 U.S. 817, 830 (1977) ("adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts").

¶ 13 Lastly, the plaintiff contends that the trial court erred when it allowed the plaintiff to remain shackled. The rules governing shackling only apply in proceedings where a defendant's guilt or innocence is to be determined. Ill. S. Ct. R. 430 (eff. July 1, 2010). The plaintiff alleges that he was shackled so that he was unable to access his legal work and put on his reading glasses, that the trial court denied his request to be unshackled, and that this was a violation of due process. However, the record does not support the plaintiff's allegations. There is no indication in the transcript of the motion hearing that the plaintiff requested to have his shackles removed. The plaintiff did not express any difficulty in reading his motion materials and, in fact, referenced to and read from the state *habeas* act. There was no denial of due process.

¶ 14 CONCLUSION

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

¶ 16 Affirmed.