

NOTICE

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2019 IL App (4th) 180627-U

NO. 4-18-0627

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 6, 2019

Carla Bender

4th District Appellate Court, IL

ERNEST COFFEY,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
MICHAEL MELVIN and TERRI KENNEDY,)	No. 18MR2
Defendants-Appellees.)	
)	Honorable
)	Jennifer Hartmann
)	Bauknecht,
)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court properly dismissed plaintiff's petition for *habeas corpus* relief.

¶ 2 *Pro se* plaintiff, Ernest Coffey, a prisoner at Pontiac Correctional Center, appeals the judgment of the trial court granting defendants, Michael Melvin and Terri Kennedy, their motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)), where plaintiff failed to state a valid claim for *habeas corpus* relief under section 10-124 of the Code (735 ILCS 5/10-124 (West 2016)). We affirm.

¶ 3 I. BACKGROUND

¶ 4 In October 2009, the trial court found plaintiff guilty of two counts of first-degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)) and sentenced plaintiff to 60 years' imprisonment.

¶ 5 In January 2018, plaintiff filed a *pro se* petition for *habeas corpus* relief (735 ILCS 5/10-101 *et seq.* (West 2016)), alleging the trial court lacked jurisdiction because his first-degree murder indictment was defective. Plaintiff sought—among other forms of relief—immediate release from custody.

¶ 6 In August 2018, the trial court granted defendants' 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2016)), finding plaintiff failed to state a valid claim for *habeas corpus* relief. The court stated as follows:

"[I]n his habeas petition, plaintiff alleges that the judgment upon which he is being held is void due to alleged errors in the grand jury indictment and/or lack thereof. *Habeas corpus* relief is only available under certain specific circumstances as provided under the *habeas corpus* statute, specifically where the court lacked jurisdiction or some post conviction occurrence entitles him to release. Here, plaintiff has failed to allege a proper cause of action for habeas relief. Void judgments do not divest the court of jurisdiction, nor has there been any post conviction occurrence alleged which would justify his immediate release. For these reasons, defendant's 2-615 motion to dismiss is granted."

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Plaintiff appeals the judgment of the trial court granting defendants' 2-615 motion to dismiss plaintiff's claim for *habeas corpus* relief. We affirm.

¶ 10 A. Standard of Review

¶ 11 "A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face." *Beacham v. Walker*, 231 Ill. 2d 51, 57, 896 N.E.2d 327, 331 (2008). We construe the allegations in the complaint in the light most favorable to the plaintiff, accepting as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Id.* at 58. "However, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action." *Id.* Accordingly, we review *de novo* the trial court's order granting a section 2-615 motion. See *id.* at 57.

¶ 12 *B. Habeas Corpus Relief*

¶ 13 "*Habeas corpus* provides relief only on the grounds specified in section 10-124 of the Code (735 ILCS 5/10-124 (West 2016))." *Id.* at 58. "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." *Id.* "A complaint for order of *habeas corpus* may not be used to review proceedings that do not exhibit one of these defects, even though the alleged error involves a denial of constitutional rights." *Id.* "[T]he sole remedy for a prisoner entitled to *habeas corpus* relief is immediate discharge from custody." *Ragel v. Scott*, 2018 IL App (4th) 170322, ¶ 28, 99 N.E.3d 610. "[I]f it is clear from a review of the complaint, that the plaintiff is not entitled to the relief of *habeas corpus*, the order shall be denied." *Beacham*, 231 Ill. 2d at 59 (quoting *Hennings v. Chandler*, 229 Ill. 2d 18, 26, 890 N.E.2d 920, 925 (2008)).

¶ 14 Plaintiff challenges the trial court's dismissal of his *habeas* petition arguing a defective indictment divested the trial court of jurisdiction. Defendants disagree and argue

plaintiff is not entitled to *habeas corpus* relief because plaintiff failed to establish a valid claim under section 10-124. We agree with defendants.

¶ 15 Article VI, section 9 of the Illinois Constitution confers on trial courts "original jurisdiction of all justiciable matters ***." Ill. Const. 1970, art. VI, § 9. Justiciable matters are any definite and concrete issues appropriate for review by the court. *Belleville Toyota v. Toyota Motor Sales*, 199 Ill. 2d 325, 335, 770 N.E.2d 177, 184 (2002). A trial court acquires subject matter jurisdiction when the State creates a justiciable controversy by filing criminal charges with the court. *People v. Woodall*, 333 Ill. App. 3d 1146, 1156, 777 N.E.2d 1014, 1022 (2002).

¶ 16 Here, the State, in 2009, charged plaintiff by indictment with two counts of first-degree murder in the circuit court of Peoria County. Therefore, the trial court obtained subject matter jurisdiction over plaintiff. While plaintiff argues a defect in the indictment, any defect in the indictment fails to divest the trial court of subject matter jurisdiction. See *People v. Hughes*, 2012 IL 112817, ¶ 28, 983 N.E.2d 439. We also note that when plaintiff personally appeared in court for his trial, the court acquired personal jurisdiction over plaintiff. See *People v. Rios*, 2013 IL App (1st) 121072, ¶ 16, 2 N.E.3d 368. Given the trial court possessed both personal and subject matter jurisdiction, plaintiff's jurisdiction argument fails.

¶ 17 Furthermore, no postconviction event occurred that justifies plaintiff's immediate release from custody. Plaintiff failed to allege any occurrence arose subsequent to his conviction that entitled him to release. See *People v. Gosier*, 205 Ill. 2d 198, 206, 792 N.E.2d 1266, 1270 (2001). Under these circumstances, plaintiff failed to establish a valid claim for *habeas corpus* relief under section 10-124. Accordingly, we affirm the trial court's judgment granting defendants' 2-615 motion to dismiss.

¶ 18

III. CONCLUSION

¶ 19 For the reasons stated, we affirm the trial court's judgment.

¶ 20 Affirmed.