

NOTICE
Decision filed 03/19/19. 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.

2019 IL App (5th) 180191-U

NO. 5-18-0191

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).

PIERRE A. MONTANEZ,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	No. 17-MR-267
)	
MENARD CORRECTIONAL CENTER WARDEN,)	Honorable
)	Stephen P. McGlynn,
Defendant-Appellee.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Moore and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in denying plaintiff’s complaint for order of *habeas corpus* based on improper venue and lack of jurisdiction. We reverse and remand for further proceedings.

¶ 2 Plaintiff, Pierre A. Montanez, an inmate in the Illinois correctional system, filed a *pro se* complaint for order of *habeas corpus* against Jacqueline Lashbrook, warden of Menard Correctional Center, in the St. Clair County circuit court. The circuit court “denied” plaintiff’s complaint, finding the court lacked jurisdiction because plaintiff filed his complaint in the wrong venue. We reverse and remand.

¶ 3

BACKGROUND

¶ 4 In Cook County case number 02-CR-31134, plaintiff was found guilty of aggravated kidnapping, aggravated vehicular hijacking, and two counts of first-degree murder. He was sentenced to life imprisonment on the two murder convictions, plus consecutive terms of 27 and 20 years' imprisonment on the remaining convictions. Plaintiff's convictions were affirmed on direct appeal. *People v. Montanez*, 2014 IL App (1st) 122369-U.

¶ 5 On August 30, 2017, plaintiff commenced this proceeding by filing a *pro se* complaint for *habeas* relief in St. Clair County. Plaintiff sought immediate release from custody on the grounds that (1) his murder indictment was defective for failing to allege an accountability theory, (2) the first-degree murder statute is unconstitutionally vague because it uses the word "another" differently than the accountability statute, (3) his natural life sentence was imposed under a statute that had been struck down at the time of sentencing, (4) the circuit court lacked jurisdiction to sentence him because an associate judge, not a circuit judge, presided over his trial, and (5) his indictments for aggravated kidnapping and aggravated hijacking were void. When plaintiff commenced this action, he was in custody at the Menard Correction Center located in Randolph County.

¶ 6 On March 12, 2018, the circuit court "denied" plaintiff's complaint, finding the complaint was filed in the wrong venue. The court found it lacked "jurisdiction over the parties" and that St. Clair County was not the "venue of the underlying criminal matter." This appeal follows.

ANALYSIS

¶ 7

¶ 8 On appeal, this court reviews legal issues *de novo*. *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 39.

¶ 9 Illinois prisoners “may apply for *habeas corpus* in the manner provided in Article X of” the Code of Civil Procedure. 735 ILCS 5/10-102 (West 2016). Application for *habeas relief* must be made to (1) the Illinois Supreme Court, (2) the circuit court of the county in which the person is imprisoned or restrained, or (3) the circuit court of the county in which the person was sentenced or committed. 735 ILCS 5/10-103 (West 2016).

¶ 10 Plaintiff was convicted and sentenced in Cook County, and was imprisoned in Randolph County when he filed his complaint. As such, the circuit court was correct in finding that St. Clair County was not the proper venue for plaintiff’s complaint. The court, however, erred in “denying” plaintiff’s complaint based on improper venue and lack of “jurisdiction over the parties.” Although couched in terms of a denial, it appears the court intended to dismiss plaintiff’s complaint based on the belief it lacked personal jurisdiction over defendant because venue was improper. It also appears that the circuit court acted *sua sponte*, as the record does not indicate that defendant filed an objection to the court’s jurisdiction over her person (735 ILCS 5/2-301(a) (West 2016)) or that a motion to transfer venue was filed (735 ILCS 5/2-104 (West 2016)).

¶ 11 The St. Clair County circuit court also had personal jurisdiction over defendant because Illinois wardens are amenable to suit in any circuit court in Illinois. See *Watkins v. Page*, 322 Ill. App. 3d 360, 363 (2001) (“The Habeas Corpus Act, which grants circuit

courts authority to issue writs of *habeas corpus*, does not confine the court’s authority to only those wardens within its circuit.”).¹

¶ 12 Although plaintiff filed his claim in the wrong venue, this error did not divest the the circuit court of jurisdiction and the court erred in dismissing the complaint on this basis. See *Sullivan v. Sullivan*, 110 Ill. App. 3d 714, 719 (1982). Section 2-104(a) of the Code of Civil Procedure states: “No order or judgment is void because rendered in the wrong venue ***. No action shall abate or be dismissed because commenced in the wrong venue if there is a proper venue to which the cause may be transferred.” 735 ILCS 5/2-104(a) (West 2016). A defendant waives his or her objection to improper venue unless he or she files a timely motion to transfer to a proper venue. 735 ILCS 5/2-104(b) (West 2016).

¶ 13 In this case, the circuit court erred in dismissing plaintiff’s complaint based on improper venue. Instead of dismissal, the remedy for improper venue is to transfer the cause to the proper venue, should defendant file a timely motion requesting such. See 735 ILCS 5/2-104(a), (b) (West 2016).

¶ 14 CONCLUSION

¶ 15 The circuit court’s order denying plaintiff’s complaint is vacated and the cause is remanded for further proceedings.

¹Personal jurisdiction also requires service of process. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986). While it is unclear from the record whether plaintiff has ever served defendant, it does not appear that the circuit court relied upon this element of personal jurisdiction in entering its order and defendant has not raised this issue on appeal.

¶ 16 Reversed and remanded.