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2011 IL App (3d) 110018-U

Order filed November 15, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

SHERMAN SPEARS,	) Appeal from the Circuit Court
	) of the 12th Judicial Circuit,
Plaintiff-Appellant,	) Will County, Illinois,
	)
v.	) Appeal No. 3-11-0018
	) Circuit No. 10-MR-285
MARCUS HARDY, Warden,	)
Stateville Correctional Center,	) Honorable
	) Marzell L. Richardson, Jr.,
Defendant-Appellee.	) Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Presiding Justice Carter and Justice Holdridge concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court did not abuse its discretion in dismissing plaintiff's *habeas corpus* complaint for want of prosecution because the trial court had both jurisdiction and authority to do so.
- ¶ 2 Plaintiff, Sherman Spears, filed a *pro se* complaint for *habeas corpus* relief on March 22, 2010 (735 ILCS 5/10-101 *et seq.* (West 2010)). On September 10, 2010, the trial court dismissed the complaint, for the second time, for want of prosecution. Plaintiff's motion to reinstate the case was denied. Thereafter, on January 10, 2011, plaintiff filed a motion for leave to file a late notice

of appeal, which this court granted. Plaintiff appeals the dismissal of his *habeas* complaint. In his first argument on appeal, plaintiff contends that the trial court lacked subject matter jurisdiction to dismiss plaintiff's *habeas corpus* complaint because a misdemeanor trial court cannot adjudicate a felony matter. Plaintiff further contends that defendant failed to comply with the requirements of the *Habeas Corpus* Act (Act) by failing to make a return or bring plaintiff to court. 735 ILCS 5/10-113, 10-114 (West 2010). In plaintiff's second argument, he contends that the trial court lacked jurisdiction over plaintiff's criminal case to enhance his sentence beyond the statutory parameters because it failed to notify plaintiff and plead the statutory brutal or heinous elements for his enhanced sentence. We affirm.

¶ 3

#### FACTS

¶ 4 On October 3, 1989, a jury found plaintiff guilty of murder, attempted murder, and home invasion (Ill. Rev. Stat. 1987, ch. 38, pars. 9-1(a)(1); 8-4(a), 9-1(a)(1); 12-11(a)(2)). On December 1, 1989, the trial court found aggravating factors and sentenced plaintiff to life for murder to run consecutive to 60 years' imprisonment for attempted murder. The trial court did not sentence plaintiff for home invasion.

¶ 5 On March 22, 2010, plaintiff filed a *pro se habeas corpus* complaint alleging that he was entitled to immediate release because the trial court was without authority or jurisdiction to extend his sentence beyond the statutory maximums. Plaintiff claimed that the State did not charge or plead the sentence enhancement elements of a prior murder or brutal and heinous behavior. Plaintiff asserted that these statutory violations divested the trial court of both subject matter and personal jurisdiction, and therefore rendered his sentence void.

¶ 6 On May 12, 2010, the trial court issued a summons for defendant. On the return date of the

summons, June 11, 2010, the trial court called plaintiff's case, noted none of the parties appeared, and dismissed the *habeas corpus* complaint for want of prosecution. On June 29, 2010, plaintiff filed a motion to vacate the dismissal and reinstate his case to allow him to effect service on defendant. Plaintiff asserted in his motion that he did not receive the summons until it had already expired. Plaintiff alleged that the prison withheld the summons from him, but asserted that he still filled out the summons and returned it to the Will County sheriff's department. However, the record does not reflect that service was made on defendant.

¶ 7 On July 9, 2010, the trial court granted plaintiff's motion and issued a new summons, with a return date of September 10, 2010. On September 10, 2010, the trial court called plaintiff's case, noted none of the parties appeared, and dismissed the *habeas corpus* complaint for want of prosecution. Following this dismissal, plaintiff filed a motion to vacate and reinstate on September 29, 2010, which alleged plaintiff did not receive the summons until it was too late to serve it on defendant. Again, plaintiff claimed the prison withheld the summons from him, but that he filled it out and sent it to the Will County sheriff's department. The record, however, does not show that plaintiff sent the summons to the sheriff's department or that service was made on defendant. Plaintiff's motion was denied by the trial court on November 19, 2010.

¶ 8 On January 10, 2011, plaintiff filed a late notice of appeal and an accompanying motion for leave to file the appeal. This court granted plaintiff's motion.

¶ 9 ANALYSIS

¶ 10 Before we may consider the merits of this appeal, we note that the State asserts this court lacks subject matter jurisdiction over this appeal because plaintiff's notice of appeal was untimely. A timely filed notice of appeal is necessary to establish this court's jurisdiction. *People v. Lugo*, 391

Ill. App. 3d 995 (2009). In this case, the State mistakenly stated that plaintiff filed his late notice of appeal on February 4, 2011. However, upon examination of plaintiff's original motion for leave to file a late notice of appeal, the motion was received by this court on January 10, 2011, and therefore was within the filing deadline. Accordingly, we have jurisdiction over this appeal, and will address the merits of plaintiff's appeal.

¶ 11 On appeal, plaintiff contends that the trial court lacked subject matter jurisdiction to dismiss plaintiff's *habeas corpus* complaint because a misdemeanor trial court cannot adjudicate a felony matter.

¶ 12 *Habeas corpus* provides relief to those who are wrongfully imprisoned or restrained. 735 ILCS 5/10-101 *et seq.* (West 2010). It is well established that *habeas corpus* relief is available only when the court lacked jurisdiction over the petitioner or when something occurs after the court entered judgment that entitles a petitioner to release. 735 ILCS 5/10-124 (West 2010); *Beacham v. Walker*, 231 Ill. 2d 51 (2008).

¶ 13 In the instant case, plaintiff's *habeas corpus* complaint was dismissed by the trial court for want of prosecution. Courts have the inherent power to dismiss a suit for want of prosecution. *Bender v. Schallerer*, 9 Ill. App. 3d 951 (1973). A trial court's determination that there has been a lack of diligent prosecution warranting dismissal rests within the sound discretion of the trial court, and will not be disturbed on appeal unless there has been an abuse of discretion. *Elward v. Mancuso Chevrolet, Inc.*, 122 Ill. App. 2d 421 (1970).

¶ 14 We conclude that the trial court had the jurisdiction and authority to dismiss plaintiff's complaint for want of prosecution, and did not abuse its discretion in doing so. The Act explicitly grants subject matter jurisdiction of a *habeas corpus* complaint to circuit courts. 735 ILCS 5/10-103

(West 2010) ("Application for the relief shall be made to the Supreme Court or to the circuit court"). Though Illinois Supreme Court Rule 295 (eff. May 28, 1975) does not allow associate judges to conduct felony trials, except where the chief judge has authorized them to do so, and plaintiff's *habeas corpus* complaint was dismissed by an associate judge, the complaint was not a felony trial, or even a criminal proceeding. See *Hennings v. Chandler*, 229 Ill. 2d 18 (2008) (a *habeas corpus* proceeding is a civil action, separate and distinct from the underlying criminal proceeding). Therefore, the trial court had the authority to dismiss plaintiff's complaint.

¶ 15 Plaintiff further contends that defendant failed to comply with the requirements of the *Habeas Corpus* Act (Act) by failing to make a return or bring plaintiff to court. 735 ILCS 5/10-113, 10-114 (West 2010). Plaintiff argues that the trial court lacked jurisdiction over plaintiff's criminal case to enhance his sentence beyond the statutory parameters because it failed to notify plaintiff and plead the statutory brutal or heinous elements for his enhanced sentence.

¶ 16 A defendant is not required to act until he is served with process. See 735 ILCS 5/10-113 (West 2010) ("The officer or person *upon whom such order is served* shall state in his or her return") (emphasis added); 735 ILCS 5/10-114 (West 2010) ("The officer or person making the return, shall, at the same time, bring the body of the party \*\*\* according to the command of the order"). The record contains no proof that plaintiff sent the summons to the sheriff's department or that defendant was served with process. See *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294 (1986) (stating that a court will not acquire jurisdiction of a defendant unless the return of the officer serving process shows service was made on defendant in a manner provided by law). The only evidence plaintiff presented was his assertion that he returned the summons to the sheriff's department after he received it from the prison mail. The burden rests on the appellant to provide a sufficiently complete

record to support his claim of error, and in the absence of such a record, the reviewing court will presume that the trial court's order was in conformity with established legal principles and has a sufficient legal basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984). Without service of process, defendant was not required to make a return or bring plaintiff to court. See 735 ILCS 5/10-113, 10-114 (West 2010).

¶ 17 The trial court did not abuse its discretion in dismissing plaintiff's *habeas corpus* complaint. Since we affirm the trial court's dismissal, we need not address the merits of plaintiff's *habeas corpus* complaint.

¶ 18

#### CONCLUSION

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

¶ 20 Affirmed.