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2011 IL App (3d) 100462-U

Order filed August 23, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

RICHARD G. WEBB,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3–10–0462
	)	Circuit No. 08–MR–929
ALFREDA KIBBE, Acting Director,	)	
Rushville Treatment and Detention	)	
Facility, Rushville, Illinois,	)	Honorable
	)	Marzell L. Richardson, Jr.
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Schmidt concurred in the judgment.
Justice McDade specially concurred.

ORDER

¶ 1 *Held:* The trial court properly dismissed plaintiff's amended *habeas corpus* complaint because plaintiff failed to state a claim upon which relief could be granted. Plaintiff's challenge to the court's jurisdiction to detain plaintiff was previously decided by this court in another proceeding. The court's detention order, committing plaintiff as a sexually violent person, remained valid even after plaintiff was transferred to the Department of Corrections to serve a sentence for an unrelated offense.

¶ 2 Plaintiff, Richard G. Webb, filed an amended application for order of *habeas corpus* on

May 5, 2009, in the circuit court of Will County, Illinois which the trial court dismissed pursuant to the State's motion. Plaintiff appeals the dismissal of his *habeas corpus* complaint. We affirm.

¶ 3 FACTS

¶ 4 According to the allegations contained in plaintiff's amended application for *habeas corpus*, plaintiff entered a plea of guilty for the offense of aggravated criminal sexual abuse in Will County cause No. 97–CF–5109 on December 11, 1998, and received a sentence of four years in the Illinois Department of Corrections (DOC). Plaintiff's term of mandatory supervised release (MSR) was scheduled to begin on September 29, 1999, for the sentence he received in Will County cause No. 97–CF–5109.

¶ 5 However, on or about September 29, 1999, the State filed a petition alleging that plaintiff was eligible for civil commitment as a sexually violent person (SVP) pursuant to the Sexually Violent Persons Commitment Act (the Act). See 725 ILCS 207/1 *et seq*. (West 1998). According to plaintiff's amended application, he became a pre-trial detainee of the Department of Human Services (DHS) pursuant to a court order issued on September 29, 1999. Webb's amended application for *habeas corpus* does not allege or describe the outcome of the pending SVP petition filed by the State in 1999.

¶ 6 Plaintiff's amended application for *habeas corpus* asserts plaintiff remained in the detention of DHS until the State charged plaintiff with aggravated battery in Will County cause No. 06–CF–2417 which occurred on or about September 20, 2006. The criminal court judge set bail in the amount of $25,000 for the new criminal offense that allegedly occurred during the time plaintiff was subject to detention in DHS. It appears from the documents contained in this record that defendant was transferred from a DHS facility and held in the Will County Jail

pending the outcome of the new criminal charges initiated in 2006.

¶ 7 Also according to plaintiff's amended application for *habeas corpus*, Webb entered a plea of guilty to the offense of aggravated battery and was sentenced to two years in DOC on January 5, 2007. The sentencing order in cause No. 06–CF–2417 provided that defendant would be returned directly to DHS upon completion of his incarceration in that case.

¶ 8 Pursuant to court order in cause No. 06--CF–2417, Webb was returned directly to the custody of DHS following his release from DOC for his aggravated battery conviction. Webb filed his amended application for *habeas corpus* relief in this case on May 5, 2009, claiming that the trial court lacked jurisdiction to return him to the custody of DHS, once the State elected to file criminal proceedings against him in lieu of conducting a trial on the SVP petition filed in 1999 and that his due process rights were violated.

¶ 9 On June 9, 2009, the State filed a motion to dismiss the amended application for *habeas corpus* relief pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5.2-615 (West 2008)). In that motion, the State alleged Webb previously requested the court to dismiss the SVP commitment action in cause No. 99–MR–458 claiming that the court lost jurisdiction to proceed with the SVP commitment by electing to criminally prosecute him. The trial court denied Webb's motion to dismiss the SVP proceedings in cause No. 99–MR–458 on February 8, 2008. The State claimed that Webb's amended application raised the same argument previously decided by the court in cause No. 99–MR–458, and therefore, Webb did not have a viable challenge to the SVP's court jurisdiction. The State also alleged that a *habeas corpus* petition could not be used in lieu of a direct appeal of the trial court's ruling on the motion to dismiss heard in cause No. 99–MR–458 and that Webb was being legally detained by DHS.

¶ 10 On May 14, 2010, the trial court granted the State's motion to dismiss Webb's amended application for *habeas corpus* relief. Webb now appeals the court's ruling dismissing his amended application for *habeas corpus* relief.

¶ 11 ANALYSIS

¶ 12 *Habeas corpus* provides relief to those who are wrongfully imprisoned or restrained. 735 ILCS 5/10–101 *et seq*. (West 2008). 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. *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008). The decision to grant a motion to dismiss a *habeas corpus* complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)) is reviewed *de novo*. *Beacham v. Walker*, 231 Ill. 2d at 57.

¶ 13 On appeal, Webb argues that he alleged a claim for which *habeas corpus* relief could be granted on the grounds that the trial court lacked jurisdiction to order him to be returned to DHS in 2007 after he completed a period of incarceration in DOC for aggravated battery. Webb also claims the State was required to refile a new SVP petition and DOC evaluation to justify the trial court's decision to order Webb to be returned directly to DHS from DOC instead of releasing Webb on MSR. Webb further contends that the State did not comply with sections 15(b-7) and 15(e) of the Act. 725 ILCS 207/15(b-7), (e) (West 2008). Finally, Webb alleges that his continued detention runs afoul of Justice Kennedy's concurrence in *Kansas v. Hendricks*, 521 U.S. 346 (1997) and transforms his civil detention into an improper punitive order.

¶ 14 In *People v. Webb*, 393 Ill. App. 3d 478 (2009), this court affirmed the circuit court's authority to enter a sentencing order which provided that Webb be directly returned to the

custody of DHS upon completion of his sentence for aggravated battery. Our decision in *People v. Webb*, 393 Ill. App. 3d 478, was issued on July 27, 2009. Based on the rationale set forth in that decision, Webb is now estopped from challenging the exact same issue in a *habeas corpus* application. See *People v. Tenner*, 206 Ill. 2d 381 (2002). Thus, Webb's first argument fails in light of our previous ruling in *People v. Webb*, 393 Ill. App. 3d 478. [1]

¶ 15 Webb next argues that the court lacked jurisdiction over him because the State failed to comply with section 15(b-7) of the Act (725 ILCS 207/15(b-7) (West 2006)) by not filing a new SVP petition once he began serving MSR for the aggravated battery conviction. The pertinent section of the statute, upon which defendant relies, provides:

> "A person convicted of a sexually violent offense remains eligible for commitment as a sexually violent person pursuant to this Act under the following circumstances: (1) the person is in custody for a sentence that is being served concurrently or consecutively with a sexually violent offense; (2) the person returns to the custody of the Illinois Department of Corrections or the Department of Juvenile Justice for any reason during the term of parole or mandatory supervised release being served for a sexually violent offense; or (3) the person is convicted or adjudicated delinquent for any

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[1] After accepting defendant's plea to aggravated battery in cause No. 06–CF–2417, the court entered a sentencing order directing DOC to return Webb to the custody of DHS upon completion of his sentence. Defendant did not file either a motion to set aside his plea or a direct appeal. However, defendant filed a postconviction petition in that cause challenging the court's authority or jurisdiction to order his return to DHS. The trial court dismissed Webb's postconviction petition, and Webb appealed the court's ruling.

> offense committed during the term of parole or mandatory supervised release being served for a sexually violent offense, regardless of whether that conviction or adjudication was for a sexually violent offense." 725 ILCS 207/15(b-7) (West 2008).

¶ 16 We conclude the plain language of subsection (b-7) of the statute provides that a person "remains" eligible for commitment if any one of the three stated circumstances occur. Subsection (b-7) simply clarifies that the period for filing an SVP petition remains open in those particular circumstances. However, the subsection does not address the circumstances presented in the case where Webb was initially detained as a result of a timely, pending SVP petition and subsequently was convicted and incarcerated for an unrelated criminal offense committed while lawfully subject to detention in DHS. Here, Webb was merely delivered by DHS to a correctional facility to serve a sentence in a criminal case, but was not released by court order from DHS' detention on the pending SVP petition in cause No. 99–MR–458.

¶ 17 In *White v. Phillips*, 405 Ill. App. 3d 190 (2010), we rejected this very argument. In that case, appellant, who was a SVP, argued that once he was transferred to the custody of DOC for an unrelated offense, it was "an implied, tacit, or actual finding by the Department of Human Services that [he] was no longer an SVP." *White v. Phillips*, 405 Ill. App. 3d at 192. We explained that, "[t]he legislature, by providing a clear method for release from custody, denied all others." *White v. Phillips*, 405 Ill. App. 3d at 193. The Act itself provides that a person, once detained, cannot be released from pretrial detention as a SVP without a court allowing such release. Specifically, section 30(a) states that:

> "[a] detention order under this Section remains in effect until the person is discharged after a trial under Section 35 of this Act or until the effective date of a commitment order under Section 40 of this Act, whichever is applicable." 725 ILCS 207/30(a) (West 2008).

The Act provides that the only way a person can be discharged from detention is by court order. *White v. Phillips*, 405 Ill. App. 3d at 193. That same reasoning is applicable in the instant case. After Webb became a pretrial detainee for purposes of a SVP petition, that detention order remained valid until Webb was r*eleased* by court order following a trial on the merits of the SVP petition or once the effective date of the commitment order expired. Since Webb alleged he remained a pretrial detainee concerning his SVP petition, we conclude his detention order remained valid.

¶ 18 In a related argument, Webb also claims that section 15(e) of the Act (725 ILCS 207/15(e) (West 2008)) governs the necessity for a new SVP petition in this case. However, this argument also fails. Section 15(e) provides that the:

> "filing of a petition under this Act shall toll the running of the term of parole or mandatory supervised release until: (1) dismissal of the petition filed under this Act; (2) a finding by a judge or jury that the respondent is not a sexually violent person; or (3) the sexually violent person is discharged under Section 65 of this Act, unless the person has successfully completed a period of conditional release pursuant to Section 60 of this Act." 725 ILCS 207/15(e)

(West 2008)).

This provision only relates to the tolling of MSR for the sentence on the underlying sexually violent offense and does not mandate the filing of a new petition in the event that an individual commits a new and unrelated offense while detained by DHS.

¶ 19 As to Webb's final argument that his continued detention is contrary to the United States Supreme Court decision in *Hendricks*, we agree that Justice Kennedy's concurrence in *Hendricks* stressed that civil commitment should not be used to punish a detainee or to further the goals of retribution and deterrence. *Kansas v. Hendricks*, 521 U.S. at 371-73. However, our supreme court has reviewed the Act and found it to be nonpunitive and civil in nature. *In re Detention of Samuelson*, 189 Ill. 2d 548, 558-59 (2000). Accordingly, we hold that Webb's detention does not run afoul of the United States Supreme Court decision in *Kansas v. Hendricks*, 521 U.S. 346.

¶ 20 Based upon the foregoing, we conclude that Webb's amended application for *habeas corpus* relief failed to state a cause of action upon which relief could be granted. Therefore, the trial court properly dismissed Webb's amended application based upon the State's motion to dismiss.

¶ 21 CONCLUSION

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

¶ 23 Affirmed.

¶ 24 JUSTICE McDADE, specially concurring:

¶ 25 While I concur with the majority's decision, I write separately to voice my bewilderment over how Webb has apparently remained in the detention of DHS for approximately nine years without a trial to determine if he is, in fact, a sexually violent person. Pursuant to the instant order, he will be returned to that detention.

¶ 26 Under section 207/35 of the Act (725 ILCS 207/35 (West 1998)), a trial to determine whether the person who is the subject of a petition for commitment as a sexually violent person "shall commence no later than 45 days after the date of the probable cause hearing." The current version of section 207/35 of the Act (725 ILCS 207/35 (West 2010)) provides that the trial "shall commence no later than 120 days after the date of the probable cause hearing." The more recent version of this statutory section also contemplates an additional delay of not more than 21 days. 725 ILCS 207/35 (2010).

¶ 27 As I have noted, the record we have suggests and the State appears to acknowledge that Webb has remained in the detention of DHS as a "pretrial detainee" for approximately nine years, and has yet to receive a trial to determine whether he is a sexually violent person. This delay is far longer than any delay contemplated under the Act. I, personally, do not believe that procedural technicalities should determine the outcome in this case. However, inasmuch as our supreme court has recently cautioned the appellate court against *sua sponte* addressing issues not raised by the parties and not considered by the trial court, my concern necessarily remains unaddressed. See *People v. Givens*, 237 Ill. 2d 311 (2010). Thus, because I believe that the majority correctly concludes that the trial court properly dismissed Webb's amended *habeas corpus* complaint for failing to state a claim on which relief could be granted, I join in the determination affirming the judgment of the trial court.