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No. 3--10--0296

Order filed May 10, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

ANDRE WINSTON, )  
 ) Appeal from the Circuit Court  
 ) of the 12th Judicial Circuit,  
 Plaintiff-Appellant, ) Will County, Illinois,  
 )  
 v. ) No. 09--MR--45  
 )  
 GERARDO ACEVEDO, ) Honorable  
 ) Marzell L. Richardson, Jr.,  
 Defendant-Appellant. ) Judge, Presiding.

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

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**ORDER**

*Held:* The dismissal of a prison inmate's petition for *habeas corpus* relief was upheld on appeal because the inmate did not state a claim for *habeas* relief when the trial court that entered judgment against him had jurisdiction and the inmate did not claim subsequent occurrence that entitled him to release.

The plaintiff, Andre Winston, incarcerated in the Department of Corrections (DOC) since 1988, filed a petition for *habeas corpus* relief pursuant to section 10--124 of the *Habeas Corpus*

Act (the Act) (735 ILCS 5/10--124 (West 2008)). Defendant Gerardo Acevedo, named in his official capacity as the prison warden, moved to dismiss the petition under section 2--615 of the Code of Civil Procedure (the Code) (735 ILCS 5/2--615 (West 2008)), arguing that the plaintiff's claims were not cognizable in *habeas corpus*. The trial court granted the motion to dismiss. The plaintiff appealed, arguing that he was entitled to immediate release on the basis that the circuit court that entered two later judgments and sentences lacked the authority to do so. We affirm.

#### FACTS

While incarcerated at the Stateville Correctional Center, serving a 37-year term of imprisonment for aggravated sexual assault, armed robbery, and armed violence, the plaintiff was charged with three offenses in an inmate disciplinary report after a search of his cell revealed six homemade shanks hidden in his bedframe. Criminal charges were also brought against the plaintiff in the Will County circuit court for that incident, and, in March 1993, the plaintiff pled guilty to unlawful use of a weapon by a felon (UW) (720 ILCS 5/24--1.1 (West 1992)) and was sentenced to a 3-year prison term to run consecutively to the 37-year sentence. The plaintiff was later charged in a second inmate disciplinary report after a strip search revealed a seven-

inch long knife concealed in his shoe. A criminal charge for UUW was brought in Will County for that offense, and, in May 1994, the plaintiff again pled guilty and was sentenced to two more years of imprisonment, to run consecutively to the prior sentences.

The plaintiff filed the instant *habeas corpus* action in January 2009, arguing that the Will County circuit court lacked jurisdiction over his two UUW cases because the DOC filed disciplinary reports charging the plaintiff with violating rules against dangerous contraband and unauthorized property but did not charge the plaintiff with a specific provision of the Illinois Administrative Code that dealt with violating state or federal laws. The defendant moved to dismiss the petition, arguing that the plaintiff's action was not cognizable under the Act. The trial court granted the motion, and the plaintiff appealed.

#### ANALYSIS

The plaintiff argues that the factual basis was insufficient to support his UUW guilty pleas because the alleged contraband could not be considered deadly weapons under section 24--1.1 of the Criminal Code of 1961 (720 ILCS 5/24--1.1 (West 1992)) and the DOC never alleged a violation of law in its disciplinary report.

A trial court's dismissal under section 2--615 of the Code (735 ILCS 5/2--615 (West 2008)) is reviewed *de novo*. *Beacham v. Walker*, 231 Ill. 2d 51 (2008). This court must determine if the allegations, viewed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Beacham*, 231 Ill. 2d 51.

Section 10--124 of the Act (735 ILCS 5/10--124 (West 2008)) lists specific instances that entitle a prisoner to *habeas corpus* relief. The specific provisions fall into two general categories: (1) the prisoner is incarcerated under a judgment of a court that lacked jurisdiction of the subject matter or the person of the petitioner; or (2) there has been some occurrence subsequent to the prisoner's conviction that entitles him to release. *Beacham*, 231 Ill. 2d 51. A complaint for an order of *habeas corpus* may not be used to review proceedings that lack one of these two defects, even if the error involves the denial of constitutional rights. *Beacham*, 231 Ill. 2d 51. Although a void order can be challenged at any time, even in a *habeas* proceeding, a voidable judgment is not reviewable on *habeas corpus*. *Beacham*, 231 Ill. 2d 51.

The determination whether a judgment is void or voidable is a question of jurisdiction. *People v. Davis*, 156 Ill. 2d 149 (1993). A judgment is void when the court that entered it lacked

jurisdiction, while a judgment is voidable when the court had jurisdiction but made an error. *People v. Welch*, 392 Ill. App. 3d 948 (2009).

In Illinois, jurisdiction is conferred by the constitution. *Davis*, 156 Ill. 2d 149. The circuit courts have jurisdiction over all justiciable matters. Ill. Const. 1970, art. VI, §8, 9. Also, the plaintiff acknowledges that he entered into both UUV plea agreements in the circuit court. See *People v. Mescall*, 379 Ill. App. 3d 670 (2008) (a circuit court obtains personal jurisdiction over a defendant who appears before it). The trial court clearly had personal jurisdiction over the plaintiff and subject matter jurisdiction over the cause.

In addition, the plaintiff has not alleged any postconviction occurrence that entitles him to immediate release. The plaintiff has not finished serving his consecutive sentences. Since the plaintiff's petition fails to state a basis for *habeas corpus* relief, we affirm the trial court's dismissal of the petition.

#### CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

Affirmed.