

NOTICE
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2011 IL App (4th) 100893-U

Filed 09/23/11

NO. 4-10-0893

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

DARRYL C. SUAREZ,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Champaign County
LEONTA JACKSON, Warden, Western Illinois)	No. 00CF1506
Correctional Center,)	
Defendant-Appellee.)	Honorable
)	Arnold F. Blockman,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff failed to state a ground for *habeas corpus* relief, the trial court did not err in dismissing his *pro se* petition.

¶ 2 In May 2010, plaintiff, Darryl C. Suarez, filed a *pro se* petition for *habeas corpus* relief, which the trial court dismissed *sua sponte*.

¶ 3 On appeal, plaintiff argues the trial court erred in denying his *pro se* petition for *habeas corpus*. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2001, a jury found plaintiff guilty of two counts of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(2) (West 2000)). In April 2001, the trial court sentenced him to two concurrent terms of 18 years' imprisonment. Plaintiff appealed, arguing (1) a witness for the State implied he had a propensity to commit crime, (2)

defense counsel provided ineffective assistance, and (3) his sentence was excessive. This court affirmed plaintiff's conviction and sentence. *People v. Suarez*, No. 4-01-0412 (November 27, 2002) (unpublished order under Supreme Court Rule 23).

¶ 6 In March 2002, while his direct appeal was pending, plaintiff filed a *pro se* petition, claiming (1) evidence at trial had been obtained through an unlawful search and seizure, (2) the State failed to disclose evidence favorable to his defense, and (3) trial counsel denied him access to discovery. Plaintiff also filed a *pro se* petition for postconviction relief under the Illinois Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-8 (West 2002)). In April 2002, the trial court considered both petitions and found the issues may have, or could have been, raised in the direct appeal. Thus, the issues were barred by forfeiture and *res judicata*. In the alternative, the court found plaintiff's claims were frivolous and patently without merit.

¶ 7 Also in April 2002, plaintiff filed a *pro se* petition for relief of judgment pursuant to section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2002)), alleging, *inter alia*, five grounds of ineffective assistance of counsel. The trial court found the issues raised were, or could have been, raised on direct appeal and were barred by forfeiture and *res judicata*. Also, the court considered the section 2-1401 petition as a successive postconviction petition and found plaintiff failed to demonstrate any basis to warrant consideration. The court also found plaintiff failed to provide supporting documentation to challenge his conviction under section 2-1401 and dismissed the petition.

¶ 8 In May 2002, plaintiff appealed the dismissal of the petition and postconviction petition as well as the petition for relief of judgment. In April 2004, this court affirmed the trial

court's dismissal. *People v. Suarez*, No. 4-02-0385 (April 26, 2004) (unpublished order under Supreme Court Rule 23). We also granted the office of the State Appellate Defender's (OSAD) motion to withdraw as counsel as to plaintiff's appeal of the dismissal of his section 2-1401 petition.

¶ 9 In January 2007, plaintiff filed a *pro se* petition for *habeas corpus* pursuant to section 10-102 of the Procedure Code (735 ILCS 5/10-102 (West 2006)). Plaintiff alleged he was being held unlawfully on the grounds of false pretenses and conspiracy of false pretenses. Plaintiff claimed the false-pretenses count was based on "a massive 'web' of criminal lies, deceptions, and cover-ups" by the trial judge, the prosecutor, the police, and the public defender. Plaintiff argued the crime of false pretenses centered on knowingly withholding title to a lease agreement identified as being addressed to Anita Suarez "by the analogy of the conjoined letter evidence that was seized and unequivocally 'addressed to Anita Suarez.'" Further, plaintiff claimed Inspector Dale Rawdin knowingly made perjured statements when he testified at trial that he recognized People's exhibit No. 8, stating it was a lease agreement in the name of Darryl Bing and a letter addressed to Anita Suarez. As to the claim of conspiracy of false pretenses, plaintiff added his direct appeal counsel and his appellate defender as "coconspirators." Plaintiff again mentioned the lease agreement and letter and claimed the conspirators knowingly made perjured statements and were liable for the furtherance of the conspiracy and for the cover-up.

¶ 10 In January 2007, the trial court found plaintiff did not state a claim for *habeas corpus* relief, as it was "a rehash of issues" asserted on direct appeal, in his postconviction petitions, his section 2-1401 petition, and his appeals from those petitions, and was now "simply phrased in conspiratorial and false pretense language." The court also found the time during

which plaintiff may lawfully be detained had not expired and he failed to state a claim for relief under section 10-124 of the Procedure Code. 735 ILCS 5/10-124 (West 2006). This court granted OSAD's motion to withdraw as counsel and affirmed the trial court's judgment. *People v. Suarez*, No. 4-07-0142 (February 22, 2008) (unpublished order under Supreme Court Rule 23).

¶ 11 In May 2010, plaintiff filed a *pro se* petition for *habeas corpus*, claiming his conviction was obtained on the grounds of false pretenses and conspiracy of false pretenses. In June 2010, the trial court dismissed the petition *sua sponte*. The court found plaintiff's petition failed to state a claim for *habeas* relief and was "another rehash of issues" made in his prior petitions and raised on appeal. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Plaintiff argues the trial court erred in denying his *pro se* petition for *habeas corpus*. We disagree.

¶ 14 Section 10-124 of the Procedure Code (735 ILCS 5/10-124 (West 2010)) sets forth the grounds upon which *habeas* relief is available.

"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." *Beacham v. Walker*, 231 Ill. 2d 51, 58, 896 N.E.2d 327, 332 (2008).

A petition for writ of *habeas corpus* for nonjurisdictional defects is inappropriate even though the petition alleges errors involving a denial of constitutional rights. *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430, 704 N.E.2d 350, 351 (1998); see also *Baker v. Department of Corrections*, 106 Ill. 2d 100, 106, 477 N.E.2d 686, 689 (1985) (noting a *habeas* petition is not a substitute for a direct appeal and "may not be utilized to correct mere judicial error"). "Consequently, where the original judgment of conviction is not void, a prisoner's maximum term has not yet expired, and nothing has occurred to warrant a prisoner's immediate discharge, the trial court is without jurisdiction to grant *habeas corpus* relief." *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125, 853 N.E.2d 878, 881 (2006). The only remedy available under *habeas corpus* is a prisoner's immediate release from custody. *Adcock v. Snyder*, 345 Ill. App. 3d 1095, 1098, 804 N.E.2d 141, 143 (2004).

¶ 15 In the case *sub judice*, plaintiff does not allege the trial court lacked jurisdiction to convict him. Moreover, he does not allege a postconviction occurrence entitling him to immediate release from custody. Instead, his claims allege error in the proceedings leading to his conviction. Thus, plaintiff does not allege a postconviction event that would entitle him to release. Also, the time during which plaintiff may be legally detained has not expired. See <http://www.idoc.state.il.us> (last visited September 17, 2011) (indicating plaintiff's discharge from mandatory supervised release is set for August 2022). Accordingly, plaintiff has not stated a valid claim for *habeas corpus*, and the trial court did not err in dismissing his *pro se* petition.

¶ 16 III. CONCLUSION

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

¶ 18 Affirmed.