

than "petitions" for "writs." *E.g.*, 735 ILCS 5/10-101, 10-103, 10-107 (West 2008); see also 735 ILCS 5/2-1501 (West 2008) ("Writs abolished."). We will therefore refer to the plaintiff's pleading as a complaint for an order of *habeas corpus*.

BACKGROUND

In 1992, the plaintiff was charged by indictment in Kane County with committing various sex acts on children in a home for dependant children, where he had been employed as a house parent. He failed to challenge the indictment against him prior to his trial. In 1993, he was convicted by a jury of six counts of aggravated criminal sexual abuse, one count of aggravated criminal sexual assault, and one count of attempted aggravated criminal sexual assault. He received consecutive sentences of 4 years' imprisonment for each count of aggravated criminal sexual abuse, 10 years' imprisonment for aggravated criminal sexual assault, and 7 years' imprisonment for attempted aggravated criminal sexual assault, a total of 41 years' imprisonment. On appeal, the plaintiff did not challenge the validity of the indictment. The reviewing court affirmed his convictions and sentences. *People v. Wahl*, 285 Ill. App. 3d 288, 674 N.E.2d 454 (1996).

On January 21, 1997, the plaintiff filed *pro se* a postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 1994)), in the circuit court of Kane County. In August 1998, he filed an amended postconviction petition, in which he did not attack the validity of any aspect of the indictment. The circuit court dismissed the postconviction petition in May 1999, and the appellate court affirmed the dismissal in *People v. Wahl*, No. 2-99-1370 (2001) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)).

The plaintiff attempted to file *pro se* a second postconviction petition on September 24, 1999, but for unknown reasons, that petition was never docketed. In October 2003, counsel filed an amended second petition for postconviction relief in the circuit court of

Kane County. The plaintiff alleged that the trial court lacked jurisdiction to impose a conviction on the count of the indictment that alleged the plaintiff had committed aggravated criminal sexual assault when he "intentionally committed an act of sexual penetration *** in that *** [he] placed his finger on the anus" of one of his victims. He argued that the charged act did not constitute penetration as a matter of law. The denial of his petition was affirmed on appeal. *People v. Wahl*, No. 2-05-1215 (2006) (unpublished order under Supreme Court Rule 23).

On March 7, 2008, the plaintiff filed *pro se* a complaint for *habeas corpus* relief in the eastern division of the United States District Court for the Northern District of Illinois. He asserted his conviction was void because of an error in statutory construction. He again argued that the count of his indictment that charged him with merely "placing his finger 'on' the anus" of one of his victims did not constitute sexual penetration under Illinois law. The complaint was dismissed as untimely on the motion of the defendant. *Wahl v. Sims*, No. 08-CV-1383 (N.D. Ill. Feb. 5, 2009) (memorandum opinion and order).

On September 28, 2009, the plaintiff filed *pro se* a petition for *habeas corpus* relief in the circuit court of Christian County. He again claimed that the circuit court of Kane County had lacked subject matter jurisdiction to enter a conviction for aggravated criminal sexual assault because the charged act did not legally constitute "penetration." The plaintiff sought an order from the court declaring his conviction for aggravated criminal sexual assault to be void and directing the defendant to immediately release him from prison. On September 28, 2009, the circuit court granted the plaintiff leave to file *in forma pauperis* and dismissed the complaint in a well-crafted written order. It noted that the plaintiff's prior attempts to attack his conviction on direct appeal, in two postconviction petitions, and in a federal *habeas corpus* complaint had failed, that the testimony of the victim at his trial demonstrated that the plaintiff had actually inserted his finger into the anus of the victim,

and that the plaintiff had failed to attack the sufficiency of the indictment in the circuit court or on appeal.

CONTENTIONS ON APPEAL

The plaintiff contends that he is entitled to *habeas corpus* relief because his conviction for aggravated criminal sexual assault was void. He asserts that the indictment for that crime was legally insufficient to convey subject matter jurisdiction on the trial court and thus he was entitled to an order from the circuit court directing his immediate release from custody. He asks this court to vacate his conviction and sentence on the count of the indictment that charged him with aggravated criminal sexual assault and to order his immediate release from custody. In the alternative, he seeks an order from this court directing the Department of Corrections to immediately recalculate his sentence by removing the sentence for his conviction for aggravated criminal sexual assault or the remand of the case to the circuit court to "allow[] [him] to argue his position."

STANDARD OF REVIEW

Where the circuit court reviews a complaint for *habeas corpus* relief and determines that the plaintiff's claims are insufficient on their face to warrant any relief available pursuant to article X, under the procedures set forth in section 10-106 of the Code (735 ILCS 5/10-106 (West 2008)), it may properly *sua sponte* deny the complaint. *Hennings v. Chandler*, 229 Ill. 2d 18, 31 (2008). The court's action is subject to *de novo* review. *Id.* at 24.

DISCUSSION

Habeas corpus is a remedy that is civil in nature, since it seeks to enforce the civil right of personal liberty. *Alexander v. Pearson*, 354 Ill. App. 3d 643, 645 (2004). "Proceedings to enforce civil rights are civil proceedings, and proceedings for the punishment of crimes are criminal proceedings. *** The prosecution against [a defendant]

is a criminal prosecution, but the writ of *habeas corpus* which he has obtained is not a proceeding in that prosecution. On the contrary, it is a new suit brought by him to enforce a civil right, which he claims[] as against those who are holding him in custody[] under the criminal process.'" *People ex rel. Ross v. Ragen*, 391 Ill. 419, 423 (1945) (quoting *Ex parte Tom Tong*, 108 U.S. 556, 559-60 (1883)). *Habeas corpus* relief under article X of the Code is governed by the rules that are applicable to civil proceedings. *Hennings*, 229 Ill. 2d at 31. The sole remedy under *habeas corpus* is the immediate discharge of the inmate from custody. *Guzzo v. Snyder*, 326 Ill. App. 3d 1058, 1064 (2001).

Section 10-124 of the Code (735 ILCS 5/10-124 (West 2008)) allows for the review of proceedings that exhibit certain defects, and even if an alleged error involves a denial of constitutional rights, *habeas corpus* may not be used to obtain the review of proceedings in the absence of those defects. *Barney v. Prisoner Review Board*, 184 Ill. 2d 428 (1998) (citing *Newsome v. Hughes*, 131 Ill. App. 3d 872, 874 (1985)). These causes for discharge are, in essence, either (1) a lack of jurisdiction over the subject matter or the person in the circuit court or (2) some postconviction occurrence that entitles an inmate to his immediate release from custody. *People v. Gosier*, 205 Ill. 2d 198, 205 (2001). Although a void order or judgment may be attacked "at any time or in any court, either directly or collaterally" (*People v. Thompson*, 209 Ill. 2d 19, 27 (2004)), including a *habeas corpus* proceeding, the remedy of *habeas corpus* is not available to review errors that only render a judgment voidable and are of a nonjurisdictional nature. *People ex rel. Lewis v. Frye*, 42 Ill. 2d 311, 312-13 (1969)

"Generally, once a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction thus acquired. Accordingly, a court may not lose jurisdiction because it makes a mistake in determining *** the facts, the law[,] or both." *People v. Davis*, 156 Ill. 2d 149, 156 (1993). "[J]urisdiction is not affected by an incorrect judgment:

'jurisdiction or power to render a particular judgment does not mean that the judgment rendered must be the one that should have been rendered, for the power to decide carries with it the power to decide wrong as well as to decide right.'" *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 532 (2001) (quoting *Davis*, 156 Ill. 2d at 156).

Jurisdiction over the subject matter is conferred on the circuit courts by the Illinois Constitution. *People v. Gilmore*, 63 Ill. 2d 23, 26 (1976). The Illinois Constitution provides, "Circuit Courts shall have original jurisdiction of all justiciable matters ***." Ill. Const. 1970, art. VI, §9. The circuit court acquires subject matter jurisdiction when the State's Attorney creates a justiciable controversy by leveling criminal charges against a defendant and filing them with the court. *People v. Woodall*, 333 Ill. App. 3d 1146, 1156 (2002). Personal jurisdiction over a criminal defendant is conferred upon the court when a defendant personally appears before it and joins the issue with a plea. *People v. Raczkowski*, 359 Ill. App. 3d 494, 497 (2005). Even if we were to find, which we need not, that the indictment that charged the plaintiff with aggravated criminal sexual assault was defective, a defective indictment does not divest the circuit court of jurisdiction. *People v. Benitez*, 169 Ill. 2d 245, 356 (1996)

In *Benitez*, the defendant appealed from the dismissal of his petition filed pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 1992)), in which he sought relief from a void judgment. He asserted that his convictions were null and void because the "circuit court lacked jurisdiction over him because he was never charged with any offense." *Benitez*, 169 Ill. 2d at 255-56. The supreme court did not agree that his convictions were void. It found that the issue could be resolved on jurisdictional grounds, stating: "Defendant fails to acknowledge the principle of Illinois jurisprudence, in effect since this court's decision in *People v. Gilmore* (1976), 63 Ill. 2d 23, 26, that jurisdiction is not conferred by information or indictment, but rather by constitutional provisions. Accordingly, a charging

instrument which fails to charge an offense does not deprive the circuit court of jurisdiction." *Benitez*, 169 Ill. 2d at 256. "Though the failure to apprise a defendant of the precise offense charged may *** violate[] his constitutional rights, that failure does not divest the court of jurisdiction over him, but instead merely renders his resultant judgment voidable if challenged in a timely manner." *People v. Mescall*, 379 Ill. App. 3d 670, 674 (2008).

The circuit court had jurisdiction over the subject matter of the prosecution, and the plaintiff gave the court jurisdiction over his person by personally appearing and defending against the charges. Any deficiency in the indictment did not deprive the circuit court of jurisdiction. Any problem with the indictment that might have rendered the judgment "voidable" would have been "'correctable on review'" only "if a timely appeal [had been] taken.'" *Raczkowski*, 359 Ill. App. 3d at 496-97 (quoting *People v. Speed*, 318 Ill. App. 3d 910, 914 (2001)).

Moreover, this precise claim was already raised in the plaintiff's second postconviction petition and was rejected on appeal. *People v. Wahl*, No. 2-05-1215 (2006) (unpublished order under Supreme Court Rule 23).

CONCLUSION

For the foregoing reasons, we conclude that his complaint was sufficient on its face to demonstrate that the plaintiff could not show that he was entitled to *habeas corpus* relief. We therefore affirm the judgment of the circuit court of Christian County.

Affirmed.