

NOTICE

Decision filed 03/21/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0295

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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WALTER MERRITTE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Randolph County.
	)	
v.	)	No. 10-MR-44
	)	
DONALD GAETZ, Warden, Menard	)	
Correctional Center,	)	Honorable
	)	Richard A. Brown,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE WELCH delivered the judgment of the court.  
Justices Stewart and Wexsten concurred in the judgment.

**RULE 23 ORDER**

*Held:* The plaintiff's challenge to the circuit court's subject matter jurisdiction fails, and the circuit court's dismissal of his *habeas corpus* complaint is affirmed.

The plaintiff, Walter Merritte, appeals the circuit court's dismissal of his *habeas corpus* complaint. He prays that this court will vacate the judgment of the circuit court and issue an order directing the warden to release him immediately. For the following reasons, we affirm the circuit court's judgment.

BACKGROUND

In a jury trial, Merritte was convicted of first-degree murder and was subsequently sentenced to life imprisonment. On direct appeal, the appellate court affirmed Merritte's conviction. *People v. Merritte*, 242 Ill. App. 3d 485 (1993). Merritte then filed a petition under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2008)) that argued that the judgment was void because the circuit court lacked jurisdiction

based on an accountability theory. The court denied the petition.

On April 29, 2010, Merritte filed a *habeas corpus* complaint that asserted that the circuit court lacked jurisdiction over the matter. The defendant filed a motion to dismiss pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2008)). The court granted the motion to dismiss and found the complaint frivolous. Merritte filed a motion to reconsider, but the court denied the motion. Merritte filed this timely appeal.

#### ANALYSIS

A motion to dismiss a *habeas corpus* complaint under section 2-615(a) of the Code (735 ILCS 5/2-615(a) (West 2008)) tests the legal sufficiency of the complaint, whereas a motion to dismiss under section 2-619(a) of the Code (735 ILCS 5/2-619(a) (West 2008)) admits the legal sufficiency of the complaint but asserts affirmative matter outside the complaint that would defeat the cause of action. Under either section of the Code, our standard of review is *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351 (2009). As a general rule, we may affirm the circuit court's decision on a *habeas corpus* complaint on any legal basis that is supported by the record. *People v. Boswell*, 148 Ill. App. 3d 915, 918 (1986).

On appeal, Merritte argues that the circuit court lacked jurisdiction to enter a judgment against him based on an accountability theory. He argues that his arrest was warrantless and lacked probable cause because there was no evidence that he aided another in the commission of the offense. Thus, he argues that the court did not have subject matter jurisdiction over the matter. In addition, he argues that due to the lack of jurisdiction, the judgment is void and cannot be appealed. Merritte asks this court to vacate the conviction, order the warden to release him, and dismiss the appeal. In response, the defendant argues that Merritte's claims are forfeited, meritless, and barred by *res judicata*. The defendant asks this court to affirm the circuit court's dismissal of the *habeas corpus* complaint.

First, we note that Merritte's argument on appeal differs from his argument in his *habeas corpus* complaint. In his original complaint, he argued that the court lacked jurisdiction because of the State's failure to assert probable cause in the indictment. On appeal, Merritte argues that the circuit court lacked jurisdiction because there was no probable cause for his arrest. Any claim that is abandoned on appeal is forfeited. See *Bunting v. Progressive Corp.*, 348 Ill. App. 3d 575, 581 (2004).

Nevertheless, even if the claim were not abandoned, we could not hold that the circuit court did not have subject matter jurisdiction. Subject matter jurisdiction is conferred on the circuit courts by the Illinois Constitution. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). Section 9 of article VI of the Illinois Constitution provides, "Circuit Courts shall have original jurisdiction of all justiciable matters." Ill. Const. 1970, art. VI, §9. "Generally, a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota Inc.*, 199 Ill. 2d at 335. Thus, the circuit court obtains subject matter jurisdiction when the State creates a justiciable controversy by filing criminal charges against the defendant with the court. See *People v. Sharifpour*, 402 Ill. App. 3d 100, 121 (2010). Moreover, "a charging instrument which fails to charge an offense does not deprive the circuit court of jurisdiction." *People v. Benitez*, 169 Ill. 2d 245, 256 (1996).

In the instant case, the circuit court had subject matter jurisdiction over the case when the State's Attorney filed criminal charges against Merritte. Thus, even taking all the facts presented by Merritte as true, the *habeas corpus* complaint still fails to state a cause of action that would entitle him to the relief requested.

In conclusion, Merritte's argument that the circuit court did not have subject matter jurisdiction is meritless, and we affirm the circuit court's judgment. In light of our decision,

we will not address the other arguments presented.

#### CONCLUSION

For the foregoing reasons, we affirm the circuit court's dismissal of Merritte's *habeas corpus* complaint.

Affirmed.