

NOTICE
Decision filed 05/27/11. 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. 5-10-0352
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).

CLEODIOUS SCHOFFNER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Randolph County.
)	
v.)	No. 09-MR-70
)	
DAVE REDNOUR, Warden, Menard)	
Correctional Center,)	Honorable
)	William A. Schuwerk, Jr.,
Defendant-Appellee.)	Judge, presiding.

JUSTICE DONOVAN delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

RULE 23 ORDER

Held: The circuit court properly dismissed the plaintiff's *habeas corpus* complaint where it failed to state a cause of action.

Plaintiff, Cleodious Schoffner, an inmate serving a natural-life term of imprisonment in the Department of Corrections, filed a complaint for *habeas corpus* relief in the circuit court of Randolph County. Donald Gaetz, then the warden of Menard Correctional Center,¹ filed a motion to dismiss the complaint, which was granted. Plaintiff appeals.

BACKGROUND

Plaintiff was convicted by an Alexander County jury of armed robbery, aggravated battery with a firearm, aggravated kidnapping, and two counts of first-degree murder. On

¹Dave Rednour has replaced Donald Gaetz as the warden of Menard Correctional Center and has been substituted as the defendant-appellee for this appeal. See *Hennings v. Chandler*, 229 Ill. 2d 18, 27, 890 N.E.2d 920, 925 (2008).

March 3, 1998, he was sentenced to imprisonment for natural life for the two murder convictions and to imprisonment for lesser terms for the other offenses.

Plaintiff brought a direct appeal from his convictions, raising a single issue: that the prior inconsistent statements of a witness should not have been admitted as substantive or impeachment evidence. We affirmed his convictions and sentences on December 6, 1999. *People v. Schoffner*, No. 5-98-0120 (1999) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)).

On July 22, 1999, plaintiff filed a *pro se* petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 1998)). Appointed counsel subsequently filed an amended petition. The issues raised included the following:

- (1) that plaintiff was not proved guilty beyond a reasonable doubt of murder by accountability where the evidence was entirely insufficient.
- (2) that plaintiff has newly discovered evidence of his innocence of the crimes for which he was convicted, in the form of affidavits of his accomplice, Glen Schoffner, who had pleaded guilty to the crimes, stating that he had not participated in the crimes other than by having been present.
- (3) that the following procedural and evidentiary errors at the trial deprived him of a fair trial:
 - (a) the trial court failed to declare a mistrial despite its knowledge that at least one juror was sleeping and, further, that several other jurors were observed sleeping during plaintiff's trial.
 - (b) the trial court failed to grant plaintiff a change of venue.
 - (c) the trial court improperly admitted into evidence certain evidence, a bullet casing found in the plaintiff's jacket pocket, for which the chain of custody had not been adequately established.

- (d) the trial court erred in denying plaintiff's motion, filed prior to the trial, to suppress the testimony of witness Norma Johnson.
- (e) the trial judge displayed a hostile attitude toward defense counsel in the presence of the jury and favored the prosecution throughout the trial.
- (4) that the prosecutor engaged in prosecutorial misconduct at the trial where he mentioned evidence in opening argument that he could not produce at the trial, he suborned the perjured testimony of Norma Johnson, and he intimidated Glen Schoffner into not testifying on plaintiff's behalf.
- (5) that plaintiff's natural-life sentences must be vacated and the cause remanded for resentencing where mandatory life sentences violate the separation-of-powers clauses of the Illinois and United States Constitutions and the sentences violate the rule set forth in *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000).
- (6) that plaintiff received the ineffective assistance of trial counsel and appellate counsel. *People v. Schoffner*, No. 5-01-0608, order at 2-3 (2003) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)).

The State filed motions to dismiss both petitions, which, following a hearing before the circuit court of Alexander County, were granted. We affirmed the judgment of the circuit court on April 24, 2003. *People v. Schoffner*, No. 5-01-0608 (2003) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)).

On August 14, 2009, plaintiff filed a complaint for *habeas corpus* relief. The complaint filed by counsel alleged that his confinement was unlawful on the following grounds:

- (a) An affidavit from Glen Schoffner constitutes newly discovered evidence of plaintiff's actual innocence.

- (b) Trial counsel was ineffective for failing to interview Glen Schoffner and for failing to relay plea offers.
- (c) The trial court abused its discretion in allowing Norma Johnson to testify, failing to strike a juror for cause, failing to grant a change of venue, and failing to remove a sleeping juror.
- (d) The State knowingly elicited perjured testimony from Glen Schoffner and Kevin Mackin.

Pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2008)), defendant filed a combined motion to dismiss plaintiff's *habeas corpus* complaint under sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2008)). In defendant's section 2-615 motion, he contends that plaintiff failed to state a ground for relief under the narrow scope of the Illinois *habeas corpus* statute. In his section 2-619 motion, defendant alleges that plaintiff's claims were barred by *res judicata* or were affirmatively refuted by the record. The circuit court granted defendant's motion to dismiss plaintiff's complaint.

On appeal, plaintiff has raised two issues: (1) that the process by which he was imprisoned was defective because his trial counsel's performance was grossly ineffective and (2) that plaintiff's conviction was obtained by false pretense and bribery. In his brief he also raises a freestanding claim of innocence.

STANDARD OF REVIEW

A motion to dismiss under section 2-615 of the Code tests the legal sufficiency of the complaint, whereas a motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the complaint but also asserts affirmative matter outside the complaint that defeats 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, 361, 919 N.E.2d 926, 932 (2009).

DISCUSSION

"[A] *habeas corpus* proceeding is a civil action, separate and distinct from the underlying criminal proceeding, and is brought to enforce a civil right of personal liberty, which the plaintiff claims *** against those who are holding him in custody[] under the criminal process." *Hennings v. Chandler*, 229 Ill. 2d 18, 23-24 n.2, 890 N.E.2d 920, 923 n.2 (2008) (citing *People ex rel. Ross v. Ragen*, 391 Ill. 419, 422-23, 63 N.E.2d 874, 875 (1945)).

The Illinois Supreme Court recently discussed the parameters of *habeas corpus* proceedings:

"*Habeas corpus* provides relief only on the grounds specified in section 10-124 of the Code of Civil Procedure (735 ILCS 5/10-124 (West 1996)). [Citations.] 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. [Citation.] A complaint for order of *habeas corpus* may not be used to review proceedings that do not exhibit one of these defects, even though the alleged error involves a denial of constitutional rights. [Citations.] Although a void order or judgment may be attacked 'at any time or in any court, either directly or collaterally' [citation], including a *habeas* proceeding [citations], the remedy of *habeas corpus* is not available to review errors which only render a judgment voidable and are of a nonjurisdictional nature." *Beacham v. Walker*, 231 Ill. 2d 51, 58-59, 896 N.E.2d 327, 331-32 (2008).

Plaintiff's claims do not fall within the narrow scope of claims upon which *habeas corpus* relief may be granted. Plaintiff does not dispute that the circuit court of Alexander County had jurisdiction over his person and the subject matter of the case. Rather, he alleged various trial errors in addition to actual innocence, prosecutorial misconduct, and ineffective

assistance of counsel. These are not postconviction events, such as the completion of a sentence (see *People ex rel. Swiderski v. Brierton*, 65 Ill. App. 3d 153, 154, 382 N.E.2d 628, 629 (1978)), that can support *habeas corpus* relief; rather, they are claims that should be raised either on direct appeal or in a postconviction petition. We specifically note that actual innocence claims, based on the reasoning in *People v. Washington*, 171 Ill. 2d 475, 665 N.E.2d 1330 (1996), may be raised in a postconviction petition. See *Washington*, 171 Ill. 2d at 489, 665 N.E.2d at 1337 ("[T]here is footing in the Illinois Constitution for asserting freestanding innocence claims based upon newly discovered evidence under the Post-Conviction Hearing Act. Procedurally, such claims should be resolved as any other brought under the Act.").

Because plaintiff's complaint does not state a cause of action for *habeas corpus* relief, we do not need to decide whether plaintiff's claims were barred by *res judicata*. See *People v. Latona*, 184 Ill. 2d 260, 281, 703 N.E.2d 901, 911 (1998) ("A court of review will not ordinarily consider issues that are not essential to the disposition of the cause before it ***.").

For the foregoing reasons, the circuit court's dismissal of plaintiff's *habeas corpus* complaint is affirmed.

Affirmed.