NOTICE
Decision filed 10/04/11. 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.

2011 IL App (5th) 100247-U

NO. 5-10-0247

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).

KARL MORGAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 10-MR-05
	)	
DAVID REDNOUR,[1] Warden,	)	Honorable
	)	Andrew J. Gleeson,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Stewart and Wexstten concurred in the judgment.

O R D E R

¶ 1 *Held*: Where plaintiff does not state a claim entitling him to immediate release from prison, the circuit court's dismissal of his *habeas corpus* complaint is affirmed.

¶ 2 Plaintiff, Karl Morgan, appeals from the circuit court's dismissal of his *habeas corpus* complaint. He argues that the circuit court erred in not admonishing him that it was recharacterizing his section 2-1401 petition (735 ILCS 5/2-1401 (West 2008)) as a postconviction petition and that error rendered his conviction void. He requests that this court reverse the circuit court's dismissal of his *habeas corpus* complaint. For the following

[1]David Rednour has replaced Donald Gaetz as the warden of Menard Correctional Center, where plaintiff is incarcerated. Pursuant to section 10-107 of the Code of Civil Procedure (735 ILCS 5/10-107 (West 2008)), Rednour should be substituted as the defendant in this action. See *Hennings v. Chandler*, 229 Ill. 2d 18, 24 n.2 (2008) (proper defendant in *habeas corpus* case is plaintiff's current custodian).

reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Morgan was convicted of first-degree murder, and he was sentenced to life imprisonment. The judgment was affirmed on direct appeal. *People v. Morgan*, 250 Ill. App. 3d 728 (1993).

¶ 5 Subsequently, *inter alia*, Morgan filed the instant *habeas corpus* complaint arguing that the circuit court erred in recharacterizing his section 2-1401 petition as a postconviction petition and did not properly admonish him. He also argued that the court's failure to properly admonish him made his conviction void, which entitled him to *habeas corpus* relief.

¶ 6 In response, the State filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2008)). On March 31, 2010, the circuit court dismissed the complaint, holding that Morgan's claim was not meritorious and that he was not entitled to relief. The court further held that the complaint was a frivolous pleading against the State and that Morgan was responsible for the payment of all filing fees and court costs.

¶ 7 Morgan has filed this timely appeal.

¶ 8 STANDARD OF REVIEW

¶ 9 A motion to dismiss under section 2-615 of the Code (735 ILCS 5/2-615 (West 2008)) admits all well-pleaded facts and tests the legal sufficiency of the complaint, and a ruling on the motion is subject to *de novo* review. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). Where a dismissal is proper as a matter of law, the circuit court may be affirmed on any basis supported by the record. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007).

¶ 10 ANALYSIS

¶ 11 On appeal, it is difficult to ascertain the exact arguments of Morgan's brief. He appears to be alleging that the circuit court's failure to admonish him regarding the recharacterization of his section 2-1401 petition makes his conviction void and entitles him to *habeas corpus* relief. He requests that this court reverse the circuit court's judgment dismissing his *habeas corpus* complaint. Morgan's other arguments on appeal are not discernable enough to warrant relief.

¶ 12 The State argues that the complaint was properly dismissed because it failed to state a claim that entitled him to immediate release from prison and, thus, *habeas corpus* relief is unavailable.

¶ 13 "The sole remedy or relief authorized by a writ of *habeas corpus* is the prisoner's immediate release from custody." *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125 (2006). The remedy is available only if (1) a lack of jurisdiction exists over the subject matter or the person in the circuit court or (2) some postconviction occurrence happens 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' [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 (2008).

¶ 14 In the instant case, Morgan's complaint does not state a claim that would entitle him to *habeas corpus* relief. Morgan asserts that his conviction is void because the circuit court failed to admonish him that his section 2-1401 petition was recharacterized as a postconviction petition. However, even assuming that this allegation is true, he would still not be entitled to immediate release from prison. Morgan has not argued that the circuit court lacked jurisdiction over him or his case. Moreover, the alleged postconviction

occurrence does not make the conviction void and would merely allow Morgan to file a successive postconviction petition if he so chooses. See *People v. Shellstrom*, 216 Ill. 2d 45, 58 (2005). Since Morgan has not stated a claim that would allow him to be immediately released from prison, we conclude that the circuit court correctly dismissed his *habeas corpus* complaint.

¶ 15 CONCLUSION

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

¶ 17 Affirmed.