

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).

2012 IL App (4th) 120241-U
NO. 4-12-0241
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
November 6, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
MAURICE A. JACKSON,)	No. 03CF687
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order dismissing defendant's petition for injunctive relief is affirmed where the State did not violate defendant's constitutional rights during the indictment proceedings. The action was barred by sovereign immunity.

¶ 2 Defendant, Maurice A. Jackson, appeals from the trial court's order dismissing his petition for injunctive relief, wherein he sought to have his first degree murder conviction reversed on the grounds that the indictment was invalid because it was not signed by all nine grand jurors. We affirm.

¶ 3 In May 2003, a grand jury indicted defendant on four counts of first degree murder for the shooting death of Demarcus Cotton. A jury found defendant guilty and the trial court sentenced him to 40 years in prison. Defendant filed multiple appeals relating to his conviction and postconviction proceedings, none of which are relevant here.

¶ 4 In February 2012, defendant filed a *pro se* petition for injunctive relief. Defendant claimed that, because his indictment was signed only by the foreman of the grand jury, the charging instrument did not indicate that the nine jurors had concurred on the issue of probable cause. He claimed sections 111-3(b) and 112-4(d) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/111-3(b), 112-4(d) (West 2010)) violated his constitutional rights because these sections required only the signature of the foreman of the grand jury and not all members, yet required all members to concur on the probable-cause determination. Following this argument, he claimed his conviction should be reversed based on this alleged illegality of the grand jury proceedings.

¶ 5 The State filed a response seeking the dismissal of defendant's petition, asserting that the grand jury and the State's Attorney followed the proper procedures required for an indictment. On February 24, 2012, the trial court entered an order as follows:

"The [d]efendant has filed a petition for injunctive relief on February 1, 2012. The [c]ourt has chosen not to recharacterize the pleading[,] but will instead address the issue raised by the [d]efendant.

The State has filed an answer on February 22, 2012. The State's motion is well taken. The [d]efendant's pleading is frivolous, patently without merit and on the motion of the State is ordered dismissed."

This appeal followed.

¶ 6 In this appeal, defendant claims that sections 111-3(b) and 112-4(d) of the Code are unconstitutional. 725 ILCS 5/111-3(b), 112-4(d) (West 2010). Section 111-3(b) specifies that an

indictment shall be signed by the foreman of the grand jury. 725 ILCS 5/111-3(b) (West 2010). Section 112-4(d) provides that if nine grand jurors concur on the issue of probable cause, then the State prepares an indictment, which the foreman signs, and returns it in open court. 725 ILCS 5/112-4(d) (West 2010). Defendant sought to enjoin the State from relying on an invalid indictment.

¶ 7 We borrow from our analysis in *Hadley v. Illinois Department of Corrections*, 362 Ill. App. 3d 680 (2005), where we addressed the defendant's claim for injunctive relief against the Illinois Department of Corrections (DOC). The defendant sought to enjoin DOC from charging \$2 for a medical copayment. We started our analysis in *Hadley* by inquiring of our subject-matter jurisdiction to address such claims, knowing that the Illinois Constitution of 1970 had abolished sovereign immunity, but had given the legislature the power to restore it. Ill. Const. 1970, art. XIII, § 4.

¶ 8 In 1971, the legislature did restore it by enacting the State Lawsuit Immunity Act (Pub. Act 77-1776, § 1 (eff. Jan. 1, 1972) (1971 Ill. Laws 3446-47)), which provides, "the State of Illinois shall not be made a defendant or party in any court" except as provided in the Court of Claims Act (705 ILCS 505/1 to 29 (West 2010)) or the Illinois Public Labor Relations Act (5 ILCS 315/1 to 27 (West 2010)). 745 ILCS 5/1 (West 2010). Thus, sovereign immunity bars lawsuits by a private citizen against the State in state court unless the legislature has waived the immunity. Courts lack jurisdiction over lawsuits barred by sovereign immunity. *Hadley*, 362 Ill. App. 3d at 683.

¶ 9 The doctrine of sovereign immunity prohibits a court from directing the State to take a specific action. *Hadley*, 362 Ill. App. 3d at 683. However, a person may file a lawsuit to enjoin State conduct that violates the law or exceeds a public official's authority. *Hadley*, 362 Ill. App. 3d

at 683. That is not the case here. Neither the State, the grand jury, nor the trial court violated the law or exceeded their respective authority related to the charging instrument or the grand jury proceedings. Unlike *Hadley*, defendant's lawsuit here *is* barred by sovereign immunity.

¶ 10 The trial court did not recharacterize defendant's petition. Defendant sought an order directing the State to act based upon a perceived violation of the law. Because there was no violation of the law, defendant's action was barred by sovereign immunity and the trial court's order dismissing the same was appropriate. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 11 Affirmed.