



warden of that facility. Stewart appeals the circuit court's dismissal of his *habeas corpus* complaint. He prays that this court will grant him *habeas corpus* relief and order the defendant to release him from custody immediately. For the following reasons, we affirm.

¶ 3

### BACKGROUND

¶ 4 Following a jury trial in 2002, Stewart was convicted of three counts of criminal sexual assault (720 ILCS 5/12-13(a)(4) (West 2000)) and one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2000)) of a 14-year-old boy. He was sentenced to consecutive terms of 10 years for the aggravated criminal sexual abuse convictions and 7 years for the criminal sexual assault conviction.

¶ 5 On November 5, 2003, this court affirmed Stewart's convictions and sentences. *People v. Stewart*, 343 Ill. App. 3d 963, 966 (2003). The Illinois Supreme Court denied his petition for leave to appeal on March 24, 2004. *People v. Stewart*, 208 Ill. 2d 553 (2004) (table). Stewart filed a petition for postconviction relief on September 24, 2004, which the circuit court dismissed. This Second District Appellate Court affirmed the dismissal on January 25, 2007. *People v. Stewart*, 369 Ill. App. 3d 1053 (2007) (table) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)). The Illinois Supreme Court subsequently denied Stewart's petition for leave to appeal on May 31, 2007. *People v. Stewart*, 224 Ill. 2d 590 (2007) (table).

¶ 6 Stewart then filed a federal *habeas corpus* petition on October 24, 2007. The United States District Court for the Northern District of Illinois denied the petition on July 2, 2009. *Stewart v. Sims*, No. 07 C 6017, 2009 WL 1952779, at \*4, \*10 (N.D. Ill. July 2, 2009). The United States Court of Appeals for the Seventh Circuit denied Stewart's appeal.

¶ 7 On June 20, 2011, Stewart filed the current *habeas corpus* complaint pursuant to section 10-124 of the Code of Civil Procedure (Code) (735 ILCS 5/10-124 (West 2010)). In his complaint, Stewart alleges that the statute under which he was convicted, section 12-

13(a)(4) of the Criminal Code of 1961 (720 ILCS 5/12-13(a)(4) (West 2000)), is unconstitutionally vague.

¶ 8 The defendant moved to dismiss the petition pursuant to sections 2-615 and 2-619(a)(9) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615, 2-619(a)(9) (West 2010)). On August 15, 2011, the circuit court dismissed Stewart's complaint pursuant to section 2-615 of the Code and section 2-619 of the Code. Further, the circuit court adopted the defendant's argument in total. Stewart now appeals the circuit court's dismissal of his *habeas corpus* complaint.

¶ 9

#### ANALYSIS

¶ 10 Stewart argues that the dismissal of his *habeas corpus* complaint was improper. He alleges that section 12-13(a)(4) of the Criminal Code of 1961 (720 ILCS 5/12-13(a)(4) (West 2000)) is unconstitutionally vague. He also argues that the circuit court's order dismissing his *habeas corpus* complaint is invalid because the form did not indicate whether the order had been granted or denied. For the following reasons, we affirm the circuit court's dismissal of Stewart's *habeas corpus* complaint.

¶ 11 *Habeas corpus* relief is a narrow remedy that is available in very limited circumstances. *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125 (2006). "The sole remedy or relief authorized by a writ of *habeas corpus* is the prisoner's immediate release from custody." *Id.* 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). A constitutional challenge is permitted in a *habeas corpus* complaint. *Faircloth*, 367 Ill. App. 3d at 126. However, the constitutional challenge must be a facial challenge. *Id.* at 127. In other words, the prisoner must show that there is no set of circumstances that exist under which the act would be valid. *Id.*

¶ 12

Dismissal Pursuant to Section 2-615

¶ 13 A motion to dismiss under section 2-615 of the Code 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). A dismissal pursuant to section 2-615 of the Code is permitted when a party fails to state a claim which would entitle him to relief. *Id.* We construe the allegations in the light most favorable to the plaintiff. *Id.* at 58. In the case of a vagueness challenge to a statute's constitutionality, the prisoner must show that no set of circumstances exist under which the act would be valid. *Faircloth*, 367 Ill. App. 3d at 126.

¶ 14 Here, Stewart has failed to show that there are no set of circumstances in which the statute would be valid. He states that the terms "trust, authority or supervision," as found in section 12-13(a)(4) of the Criminal Code of 1961 (720 ILCS 5/12-13(a)(4) (West 2000)), are impermissibly vague. Also, he argues that the criminal sexual assault statute (720 ILCS 5/12-13(a)(4) (West 2000)) is vague because the age of consent is 18 years, which differs from aggravated criminal sexual abuse statute (720 ILCS 5/12-16(d) (West 2000)), where the age of consent is 17 years. He further argues that the statute has been inconsistently applied.

¶ 15 The criminal sexual assault statute, particularly the "trust, authority or supervision" provision, has been repeatedly upheld as constitutional. *People v. Secor*, 279 Ill. App. 3d 389, 395 (1996). Further, inconsistent application does not mean that the statute is vague. *People v. Grano*, 286 Ill. App. 3d 278, 293 (1996). In addition, "[a] party may not raise a constitutional challenge to a provision of a statute that does not affect him or her." *In re Veronica C.*, 239 Ill. 2d 134, 147 (2010). The victim in Stewart's case was 14 years old. Stewart cannot argue that the age of consent invalidates the statute because neither age of consent affected him as the victim in his case was 14 years old. Therefore, dismissal

pursuant to section 2-615 of the Code was proper.

¶ 16 Dismissal Pursuant to Section 2-619(a)(9)

¶ 17 We review a dismissal pursuant to section 2-619 of the Code *de novo*. *Glisson v. City of Marion*, 188 Ill. 2d 211 (1999). Dismissal pursuant to section 2-619 of the Code is appropriate when an affirmative matter exists that defeats the plaintiff's claim. An "affirmative matter" is a "defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Glisson*, 188 Ill. 2d at 220.

¶ 18 Stewart argues that the statute under which he was convicted is unconstitutional because the terms "trust, authority or supervision" are impermissibly vague. As previously noted, the appellate court has consistently upheld the constitutionality of the "trust, authority or supervision" provision of the statute. *Secor*, 279 Ill. App. 3d at 395. The decision in *Secor* and countless others present an affirmative defense that bars Stewart's argument. Therefore, dismissal under section 2-619(a)(9) of the Code was proper.

¶ 19 Validity of Dismissal Order

¶ 20 Stewart argues that this cause should be remanded to the circuit court because the circuit court did not indicate, on the order form, whether Stewart's complaint was denied or granted. However, in such cases where the order itself is silent, we may look to the docket entry to determine whether the order is granted or denied. *Quintas v. Asset Management Group, Inc.*, 395 Ill. App. 3d 324, 330-31 (2009). The docket entry in this case states: "motion to dismiss per 5/2-615 granted." In light of the information on the docket, the circuit court clearly indicated it denied Stewart's *habeas corpus* complaint.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Christian County is affirmed.

¶ 23 Affirmed.