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2013 IL App (3d) 120389-U

Order filed May 7, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

EDWARD C. HANKS,)	Appeal from the Circuit Court
)	for the 12th Judicial Circuit,
Plaintiff-Appellant)	Will County, Illinois,
)	
v.)	No. 11- MR- 482
)	
MARCUS HARDY, Warden)	
)	The Honorable Marzell Richardson,
Defendant-Appellee.)	Judge, Presiding.
)	

JUSTICE McDADE delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff failed to state a claim upon which *habeas corpus* relief could be granted, and the trial court properly dismissed his complaint.

¶ 2 Plaintiff Edward Hanks is currently incarcerated at the Menard Correctional Center. On May 26, 2011, he filed a *pro se habeas corpus* complaint alleging that the indictment which led to his conviction was invalid. The circuit court of Will County dismissed his complaint for failure to state a claim upon which relief may be granted. We affirm.

¶ 3

FACTS

¶ 4 In 1993, Edward Hanks was convicted of aggravated criminal sexual assault and armed robbery in the circuit court of Cook County. Hanks was sentenced to consecutive terms of sixty and forty years imprisonment. His sentence was affirmed on direct appeal. Hanks later sought relief under the Post Conviction Relief Act (725 ILCS 5/122-1 *et seq.* (West 2000)), alleging ineffective assistance of appellate counsel; his petition was dismissed at the trial level, but the dismissal was reversed on appeal and that cause was remanded to the circuit court of Cook County. See *People v. Hanks*, 335 Ill. App. 3d 894 (2002).

¶ 5 In the present action, Hanks filed a *pro se* complaint in the circuit court of Will County seeking relief under the *habeas corpus* provisions of the Code of Civil Procedure (735 ILCS 5/art. 10 (West 2010)). Hanks alleged that the grand jury indictment which initiated the charges against him was invalid because the document failed to comply with the requirements for a bill of indictment. Specifically, Hanks alleged that the indictment did not contain any probable cause determination by the jury that Hanks committed the offenses for which he was charged. Hanks argued that the allegedly invalid indictment deprived the trial court of jurisdiction.

¶ 6 Defendant, the warden of the Menard Correctional Center,¹ moved to dismiss the action pursuant to section 2-615 of the Code of Civil Procedure. See 735 ILCS 5/2-615 (West 2010). Defendant argued that Hanks failed to state a claim which would entitle him to *habeas corpus*

¹The proper defendant in a habeas corpus action is the prisoner's current custodian. See *Hennings v. Chandler*, 229 Ill. 2d 18, 24 n.2 (2008). While this appeal was pending, Michael P. Atchison, the Warden of the Menard Correctional Center, became the custodian of Hanks; therefore he is the proper party in this action.

relief. The trial court agreed, and on March 9, 2012, it dismissed Hanks' complaint with prejudice. Hanks appealed.

¶ 7

ANALYSIS

¶ 8 We must determine whether the trial court erred by dismissing Hanks' complaint for *habeas corpus* relief. A section 2-615 motion attacks the legal sufficiency of a complaint. *Country Mutual Insurance Co. v. Olsak*, 391 Ill. App. 3d 295, 301 (2009). A section 2-615 motion should only be granted when it is clear that no set of facts could ever be proved that would entitle the plaintiff to recover. *Mount Zion State Bank & Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995). When reviewing a section 2-615 motion, the court must accept as true all well-pled facts and all reasonable inferences from those facts. *Behrens v. Harrah's Illinois Corp.*, 366 Ill. App. 3d 1154, 1156 (2006). We review a dismissal under section 2-615 *de novo*. *Brandt Construction Co. v. Ludwig*, 376 Ill. App. 3d 94, 100 (2007).

¶ 9 Because we conclude that Hanks is not entitled to *habeas corpus* relief, we affirm the dismissal of his complaint.

¶ 10 *Habeas corpus* relief is only available on the seven grounds specified by the Code of Civil Procedure. See 735 ILCS 5/10-124 (West 2010). These grounds fall into two general categories: (1) the prisoner was incarcerated by a court which lacked personal or subject matter jurisdiction; or (2) some occurrence subsequent to the prisoner's conviction entitles the prisoner to immediate release. *Hennings v. Chandler*, 229 Ill. 2d 18, 30 (2008) (citing *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430 (1998)). "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." *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008).

Habeas corpus relief is not available if an error only makes the judgment voidable, not void.

People ex rel. Lewis v. Frye, 42 Ill. 2d 311, 313 (1969).

¶ 11 It is clear that the trial court which sentenced Hanks possessed jurisdiction. The trial court obtains personal jurisdiction over a criminal defendant when the defendant appears and enters a plea. *People v. Woodall*, 333 Ill. App. 3d 1146, 1156 (2002). In his complaint, Hicks states that he pled not guilty before the circuit court of Cook County, and we conclude this gave the court personal jurisdiction over him. Hanks argues that he was arrested and appeared before the criminal court while in police custody, so the court did not acquire jurisdiction from his involuntary appearance and plea. We reject this argument; it is beyond question that courts acquire jurisdiction over criminal defendants who do not appear before the court voluntarily. See *People v. Bliss*, 44 Ill. 2d 363, 369 (1970) (stating it does not impair jurisdiction if the defendant is brought before the court involuntarily when held in custody after arrest); *Frisbie v. Collins*, 342 U.S. 519, 522 (1952) ("There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will."). Therefore, Hanks cannot show the circuit court of Cook County did not have personal jurisdiction over him.

¶ 12 The trial court also had subject matter jurisdiction over the criminal proceeding involving Hanks. Illinois courts are granted subject matter jurisdiction for criminal cases by the Illinois Constitution, which grants circuit courts original jurisdiction over all "justiciable matters." Ill. Const. 1970, art. VI, § 9; see also *People v. Benitez*, 169 Ill. 2d 245, 255 (1996); *People v. Gilmore*, 63 Ill. 2d 23, 26 (1976). Accordingly, the circuit court of Cook County had subject

matter jurisdiction.

¶ 13 We reject Hanks' argument that any of the alleged defects in the indictment deprived the circuit court of jurisdiction. "[J]urisdiction is not conferred by information or indictment, but rather by constitutional provisions." *Benitez*, 169 Ill. 2d at 256. Accordingly, a defective charging instrument does not deprive the circuit court of jurisdiction. *Benitez*, 169 Ill. 2d at 256; *People v. Pankey*, 94 Ill. 2d 12, 17 (1983). Hanks takes great pains to stress that he is alleging that there was *no* indictment, not merely that the indictment was defective. However, from his complaint and briefs it is clear that he is arguing that the grand jury returned a legally invalid indictment; he is not claiming that factually no indictment ever existed. Under Illinois law an invalid indictment does not deprive the circuit court of jurisdiction. See *Benitez*, 169 Ill. 2d at 256 (holding that even though defendant was never validly charged with a crime, the circuit court still possessed jurisdiction); see also *People v. Mescall*, 379 Ill. App. 3d 670, 675 (2008) (defective charging instrument only renders judgment voidable, not void). Therefore, Hanks has not shown he is entitled to *habeas corpus* relief due to a lack of jurisdiction.

¶ 14 Hanks has also failed to allege any facts which suggest that a post-conviction occurrence entitles him to an immediate release. Therefore, we conclude that Hanks has failed to state a claim upon which *habeas corpus* relief may be granted. The circuit court of Will County did not err in dismissing his complaint.

¶ 15 Affirmed.