NOTICE
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2013 IL App (4th) 120593-U

NO. 4-12-0593

FILED
March 18, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

RICHARD KALINOWSKI,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
ANGELA WINSOR, Acting Warden of Big Muddy River	)	No. 12MR445
Correctional Center; and S.A. GODINEZ, Director, The	)	
Department of Corrections,	)	Honorable
Defendants-Appellees.	)	John Schmidt,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff's complaint for *habeas corpus* relief was properly summarily dismissed as frivolous because plaintiff failed to state a claim entitling him to relief.

¶ 2 Plaintiff, Richard Kalinowski, appeals the trial court's dismissal of his *pro se habeas corpus* complaint against defendants, Angela Winsor, the acting Warden of Big Muddy River Correctional Center, and S.A. Godinez, the Director of the Illinois Department of Corrections (DOC). Fifteen days after the complaint's filing, the circuit court found the matter frivolous and dismissed plaintiff's case *sua sponte*. Plaintiff appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 1997, a jury found plaintiff to be a sexually dangerous person within the meaning of the Sexually Dangerous Persons Act (Act) (725 ILCS 205/0.01 to 12 (West 1996)) and the trial court committed him to the Director of DOC. Plaintiff appealed the judgment entered on

the jury's verdict and this court affirmed. *People v. Kalinowski*, No. 4-97-1151 (Mar. 26, 1999) (unpublished order under Supreme Court Rule 23).

¶ 5 On May 15, 2012, plaintiff filed a complaint for *habeas corpus* alleging he was being confined in violation of his constitutional rights. He claimed he was entitled to immediate release because (1) the State failed to carry its burden of proving beyond a reasonable doubt, as required by *Kansas v. Hendricks*, 521 U.S. 346 (1997), that he had a mental condition that caused him serious difficulty controlling his sexual behavior, (2) the jury was not instructed, and therefore did not find, he lacked volitional control of his sexual behavior as required by *Hendricks*, and (3) the trial court failed to conduct a hearing on his June 2000 recovery petition filed under section 9 of the Act (725 ILCS 205/9 (West 1998)).

¶ 6 On May 30, 2012, the circuit court dismissed plaintiff's complaint by docket entry, stating as follows: "Court has reviewed the plaintiff's petition for *habeas corpus* relief. Court finds the petition frivolous and without merit. Court dismisses motion; cause stricken." This appealed followed.

¶ 7 II. ANALYSIS

¶ 8 Plaintiff argues his claims are not frivolous and are proper *habeas corpus* claims. When a *habeas corpus* complaint is filed, the circuit court is required to conduct an initial review of the complaint and determine if it sufficiently establishes a question as to the legality of the plaintiff's imprisonment. *Hennings v. Chandler*, 229 Ill. 2d 18, 26, 890 N.E.2d 920, 924-25 (2008). If the complaint meets this threshold, the court shall grant an order of *habeas corpus*. *Hennings*, 229 Ill. 2d at 26, 890 N.E.2d at 924-25. "Conversely, if it is clear from a review of the complaint that the plaintiff is not entitled to the relief of *habeas corpus*, the order shall be denied." *Hennings*, 229

Ill. 2d at 26, 890 N.E.2d at 925. In determining whether the court properly denied plaintiff's complaint, we consider whether plaintiff was entitled to *habeas corpus* relief.

¶ 9 "[*H*]*abeas corpus* relief is appropriate only where the trial court lacked jurisdiction or where some occurrence has taken place after the prisoner's conviction that entitles him to release." *Adcock v. Snyder*, 345 Ill. App. 3d 1095, 1098, 804 N.E.2d 141, 143 (2004). A circuit court may *sua sponte* dismiss a plaintiff's *habeas corpus* complaint when the court determines the claimant cannot possibly win *habeas corpus* relief. *Hennings*, 229 Ill. 2d at 32, 890 N.E.2d at 928. Such relief includes the plaintiff's discharge from prison. See 735 ILCS 5/10-106 (West 2010).

¶ 10 Plaintiff's complaint sets forth no claims that entitle him to *habeas corpus* relief. Plaintiff does not challenge the trial court's jurisdiction during the sexually-dangerous-person proceedings. Instead, he challenges the sufficiency of the evidence presented during his trial in light of the U.S. Supreme Court's decision in *Hendricks*, a case decided in June 1997, two months before his trial. Neither of his two *Hendricks*-based claims can be characterized as an "occurrence [that] has taken place after the prisoner's conviction that entitles him to release." See *Adcock*, 345 Ill. App. 3d at 1098, 804 N.E.2d at 143. *Habeas corpus* actions are not permissible substitutes for direct appeal. *Baker v. Department of Corrections*, 106 Ill. 2d 100, 106, 477 N.E.2d 686, 689 (1985).

¶ 11 Plaintiff also challenges the trial court's failure to conduct a hearing on his June 2000 recovery petition. Section 9 of the Act (725 ILCS 205/9 (West 1998)) provides a person committed under the Act may file an application at any time showing he has recovered and requesting he be released. Once an application for discharge is filed, the psychiatrist, sociologist, psychologist, and warden of the institution where the applicant is confined must prepare a socio-psychiatric report concerning the applicant. 725 ILCS 205/9 (West 1998). In addition, the person is entitled to the

appointment of counsel and a jury trial on his application. *People v. Olmstead*, 32 Ill. 2d 306, 314, 205 N.E.2d 625, 630 (1965); 725 ILCS 205/5 (West 1998). We note the Act does not promote a traditional form of punishment. Instead, the State has a statutory obligation to provide psychiatric care and treatment *until recovery* for those persons determined to be sexually dangerous. *People v. Trainor*, 196 Ill. 2d 318, 324-25, 752 N.E.2d 1055, 1059 (2001). The person must remain committed for an indeterminate amount of time until he has recovered. 725 ILCS 205/8 (West 1998). Our supreme court has noted that once a recovery application has been filed, the trial court "shall" set a date for a hearing to determine if the person has recovered. *People v. Capoldi*, 37 Ill. 2d 11, 18, 225 N.E.2d 634, 638 (1967).

¶ 12 The procedures governing recovery are set forth in the Act. The Act does not provide for a person's release from confinement upon (1) the filing of a recovery application, (2) the trial court's refusal to conduct a hearing, or (3) the failure to comply with any of the specific procedures. A person is discharged only upon proof of recovery. 725 ILCS 205/8 (West 1998). Plaintiff has not sufficiently alleged his entitlement to release and *habeas corpus* relief is not available under the claims alleged in his complaint. We find plaintiff's allegations do not establish viable *habeas corpus* claims and are frivolous. The *sua sponte* dismissal of his complaint was proper. See *Hennings*, 229 Ill. 2d at 32, 890 N.E.2d at 928.

¶ 13 III. CONCLUSION

¶ 14 We affirm the trial court's judgment summarily dismissing plaintiff's *pro se* complaint for *habeas corpus* relief.

¶ 15 Affirmed.