

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).

2013 IL App (4th) 120765-U
NO. 4-12-0765
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
March 28, 2013
Carla Bender
4th District Appellate
Court, IL

LEROY McAFEE,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Vermilion County
KEITH ANGLIN, Warden, Danville)	No. 12MR148
Correctional Center,)	
Defendant-Appellee.)	Honorable
)	Derek J. Girton,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Holder White 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, Leroy McAfee, appeals the circuit court's dismissal of his *pro se habeas corpus* complaint against defendant, Keith Anglin, the Warden of Danville Correctional Center of the Illinois Department of Corrections. Four days after the complaint's filing, the circuit court found the matter to be without merit and dismissed plaintiff's case *sua sponte*. Plaintiff appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 1998, a Will County jury found plaintiff guilty of armed robbery (720 ILCS 5/18-2(a) (West 1996)) and two counts of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 1996)). Each crime was committed against a different victim. In July 1998, the trial court sentenced plaintiff to 3 consecutive terms of 14 years in prison. Plaintiff did not file a direct

appeal.

¶ 5 On July 23, 2012, plaintiff, while housed at Danville, filed a complaint for *habeas corpus*, alleging he was being confined in violation of his constitutional rights. Specifically, he claimed his rights under the confrontation clause were violated when one of the victims was not called to testify at trial. As a result, he claims, he is entitled to immediate release because he has served 2 of his 14-year terms and has begun serving the third 14-year term associated with his allegedly void conviction.

¶ 6 On July 27, 2012, the circuit court dismissed plaintiff's complaint in a written order finding as follows: "The court hereby finds and orders that the petition for *habeas corpus* relief is without merit as the plaintiff is in custody by virtue of a final judgment of the Circuit Court of Will County and the time for which plaintiff may be legally detained has not yet expired." This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 On appeal, plaintiff argues his claim has merit and is a proper *habeas corpus* claim. 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 (2008). If the complaint meets this threshold, the court shall grant an order of *habeas corpus*. *Hennings*, 229 Ill. 2d at 26. "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. Thus, in determining whether the court properly denied plaintiff's complaint, we must 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 (2004). A circuit court may *sua sponte* dismiss a plaintiff's *habeas corpus* complaint when, upon reviewing the complaint and attached documents, the court determines the claimant cannot possibly win *habeas corpus* relief. *Hennings*, 229 Ill. 2d at 32. Such relief includes the plaintiff's discharge from prison. See 735 ILCS 5/10-106 (West 2010).

¶ 10 Plaintiff's complaint sets forth no claim that entitles him to *habeas corpus* relief. Plaintiff does not challenge the trial court's jurisdiction during his criminal proceedings. Instead, he challenges the State's decision not to present the testimony of one of three of plaintiff's victims. That is, he challenges the validity and sufficiency of the evidence related to one of the three charged offenses in the context of a *Crawford* violation (see *Crawford v. Washington*, 541 U.S. 36 (2004)). Plaintiff insists the alleged violation of his right under the confrontation clause renders void his conviction associated with that victim. He alleges he had already filed a postconviction petition and has already served two of his three consecutive terms, thereby making *habeas corpus* the appropriate relief.

¶ 11 We conclude plaintiff's claim cannot be characterized as a jurisdictional challenge or 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. "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* actions are not permissible substitutes for direct appeal. *Baker v. Department of Corrections*, 106

Ill. 2d 100, 106 (1985). "There is no allegation in the petition of facts that would have deprived the circuit court of jurisdiction over the subject matter or the person of the appellant and there is no claim of any occurrence since the judgment of conviction which would entitle the appellant to release." *People ex rel. Lewis v. Frye*, 42 Ill. 2d 311, 313 (1969).

¶ 12 We find plaintiff's allegations do not establish a viable *habeas corpus* claim and are without merit. The *sua sponte* dismissal of his complaint was proper. See *Hennings*, 229 Ill. 2d at 32.

¶ 13 III. CONCLUSION

¶ 14 For the foregoing reasons, we affirm the trial court's judgment summarily dismissing plaintiff's *pro se* complaint for *habeas corpus* relief as frivolous.

¶ 15 Affirmed.