

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).

2014 IL App (4th) 130518-U

NO. 4-13-0518

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 19, 2014
Carla Bender
4th District Appellate
Court, IL

DUSTIN INGRAM,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
RANDY PFISTER, Warden, Pontiac Correctional)	No. 12MR84
Center,)	
Defendant-Appellee.)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Based on the record before this court, the trial court did not err in dismissing plaintiff's petition for *habeas corpus* relief.

¶ 2 On May 21, 2013, the trial court dismissed plaintiff Dustin Ingram's petition for *habeas corpus* relief. Plaintiff appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2012, plaintiff, who according to the Illinois Department of Corrections web site was born on April 18, 1989, filed a petition for *habeas corpus* relief in the trial court. The record in this appeal only contains the judgment and sentencing order from the underlying criminal proceedings.

¶ 5 According to plaintiff's petition, while a juvenile, he was charged with armed robbery with a firearm in March 2006. The record does not contain the charging instrument so it

is unclear under what subsection of section 18-2 of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/18-2 (West 2004)) plaintiff was originally charged. Plaintiff's case was heard in adult criminal court pursuant to the automatic transfer provision found in section 5-130 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-130(1)(a) (West 2004)). Plaintiff later entered a guilty plea to armed robbery with a dangerous weapon other than a firearm (720 ILCS 5/18-2(a)(1) (West 2004)).

¶ 6 On May 23, 2006, the trial court entered judgment and sentenced plaintiff to 18 years in prison with 3 years of mandatory supervised release (MSR). According to the sentencing order, plaintiff had been in custody since March 14, 2006.

¶ 7 Plaintiff alleges the State did not file a motion requesting a hearing as required by section 5-130(1)(c)(ii) of the Juvenile Court Act (705 ILCS 405/5-130(1)(c)(ii) (West 2004)) to sentence him as an adult because armed robbery with a dangerous weapon other than a firearm was not an offense enumerated in section 5-130(1)(a) (705 ILCS 405/5-130(1)(a) (West 2004)). As a result, plaintiff argues he should have been sentenced as a juvenile pursuant to section 5-130(c)(ii) (705 ILCS 405/5-130(c)(ii) (West 2004)) and should have been released on April 18, 2010, which was his twenty-first birthday.

¶ 8 On November 14, 2012, plaintiff filed a motion to amend his petition. Plaintiff alleged the State also lacked authority to charge him with armed robbery with a firearm because it was unconstitutional. Defendant argues he could have only been charged with robbery. Further, plaintiff argued he could not have been transferred to adult court pursuant to section 5-130(1)(a) of the Juvenile Court Act because the armed robbery with a firearm charge pursuant to which he was automatically transferred was void *ab initio*. Finally, plaintiff argued armed robbery with a dangerous weapon is not a lesser included offense of armed robbery with a

firearm. Because he was never charged with armed robbery with a dangerous weapon, plaintiff argues he could not enter a plea to that charge.

¶ 9 On December 14, 2012, defendant filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). The State did not address the claims plaintiff raised in his motion to amend his petition. Defendant argued plaintiff's case should be dismissed because his claim failed to demonstrate the trial court lacked jurisdiction over plaintiff or his case or that a postconviction occurrence entitled him to immediate release.

¶ 10 On March 28, 2013, plaintiff filed another petition for *habeas corpus* relief. Plaintiff also filed a memorandum in support of his petition.

¶ 11 On May 21, 2013, the trial court dismissed plaintiff's petition, stating the following in a docket entry:

"This cause comes before the Court today for ruling on [defendant's] motion to dismiss. Court notes Plaintiff seeks to amend his complaint and arguments therein. As the amended complaint does not materially change the underlying allegations, the motion to amend filed March 28th, 2013[,] is granted *instanter* and the arguments raised in [defendant's] motion to dismiss will be considered as its response thereto. Plaintiff is only entitled to *habeas corpus* relief on the grounds specified in the Code of Civil Procedure. A *habeas corpus* complaint may not be used to review the underlying proceedings. Plaintiff's argument that the Douglas County Circuit Court did not have jurisdiction over him is without merit. Plaintiff's argument is contrary to the statutory authorities

conferring that jurisdiction and furthermore, Plaintiff appeared in open Court. Additionally, Plaintiff has failed to demonstrate a post-conviction event entitling him to immediate release. The arguments raised by Plaintiff do not rise to the level required for *habeas corpus* relief."

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 We review a trial court's decision to grant a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)) *de novo*. *Beacham v. Walker*, 231 Ill. 2d 51, 57, 896 N.E.2d 327, 331 (2008). The question on appeal is whether the allegations of the complaint, when viewed in the light most favorable to plaintiff, sufficiently state a cause of action upon which relief can be granted. *Id.* at 58, 896 N.E.2d at 331

¶ 15 At issue is the dismissal of plaintiff's petition for *habeas corpus* relief. Our supreme court has stated *habeas corpus* relief is available only on the grounds specified in section 10-124 of the Code of Civil Procedure (735 ILCS 5/10-124 (West 2012)). *Beacham*, 231 Ill. 2d at 58, 896 N.E.2d at 331. According to our supreme court:

"It is well established that an order of *habeas corpus* is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court that lacked jurisdiction of the subject matter or the person of the petitioner, or where there has been some occurrence subsequent to the prisoner's conviction that entitles him to release. [Citations.] 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. [Citations.] Although a void order or judgment may be attacked 'at any time or in any court, either directly or collaterally' [citation], including a *habeas* proceeding [citations], the remedy of *habeas corpus* is not available to review errors which only render a judgment voidable and are of a nonjurisdictional nature." *Id.* at 58-59, 896 N.E.2d at 332.

Defendant argues the trial court correctly dismissed plaintiff's petition. We agree.

¶ 16 The gist of plaintiff's claim, liberally viewed, is that he is entitled to immediate release from prison for the following reasons: (1) he was a minor when he committed the offense in question and he is now over 21 years of age; (2) the juvenile court had exclusive authority over his case where the mandatory transfer provision of the Juvenile Court Act (705 ILCS 405/5-130 (West 2004)) did not apply because section 18-2 of the Criminal Code (720 ILCS 5/18-2 (West 2004)) was void *ab initio*; and (3) even assuming his prosecution in adult court was proper, because the State did not request a hearing for the purpose of sentencing him as an adult pursuant to section 5-130(c)(ii) of the Juvenile Court Act (705 ILCS 405/5-130(c)(ii) (West 2004)), he should have been sentenced as a juvenile and is entitled to immediate release. Based on the record before this court, plaintiff's claims are meritless as a matter of law.

¶ 17 According to plaintiff's petition, he was improperly transferred to adult court pursuant to section 5-130(1)(a) of the Juvenile Court Act (705 ILCS 405/5-130(1)(a) (West 2004)) because he was charged with armed robbery with a firearm (720 ILCS 5/18-2(a)(4) (West 2004)), which carried a penalty later deemed unconstitutional by our supreme court. Our

supreme court in *People v. Hauschild*, 226 Ill. 2d 63, 87, 871 N.E.2d 1, 14 (2007), held the sentence for armed robbery while armed with a firearm violated the proportionate penalties clause of the Illinois Constitution "because the penalty for that offense is more severe than the penalty for the identical offense of armed violence predicated on robbery with a category I or category II weapon (720 ILCS 5/33A-3(a), (a-5) (West 2000))." The statute became unconstitutional after the General Assembly enacted Public Act 91-404 (eff. Jan. 1, 2000), which added enhanced sentences for armed robbery while armed with a firearm. (As an aside, we note our supreme court in *People v. Blair*, 2013 IL 114122, ¶¶ 1-2, held the General Assembly revived the sentencing enhancements in the armed robbery statute with the passage of Public Act 95-688 (eff. Oct. 23, 2007). However, Public Act 95-688 became effective after the offenses at issue in this case were committed.)

¶ 18 Plaintiff is incorrect, however, the State had no authority to charge him with armed robbery with a firearm under what was later deemed an unconstitutional statute. In *Hauschild*, the supreme court did not throw out the defendant's conviction for armed robbery. *Hauschild*, 226 Ill. 2d at 89, 871 N.E.2d at 615-16. According to the supreme court:

"[W]hen an amended sentencing statute has been found to violate the proportionate penalties clause, the proper remedy is to remand for resentencing in accordance with the statute as it existed prior to the amendment. *** In light of this holding, we reject defendant's claim that his armed robbery while armed with a firearm should be reduced to 'simple robbery.' " *Id.* at 88-89, 871 N.E.2d at 615-16.

In *Hauschild*, this meant the defendant would be resentenced pursuant to the armed robbery statute before it was amended by Public Act 91-404 (eff. Jan. 1, 2000). *Id.* at 89, 871 N.E.2d at 616.

¶ 19 Plaintiff's reliance in the trial court on *People v. Tellez-Valencia*, 188 Ill. 2d 523, 723 N.E.2d 223 (1999), as support for his argument was misplaced. In that case, our supreme court found defendant's convictions for predatory criminal sexual assault of a child could not stand because they were prosecuted under a statute that was not in effect when the alleged offenses occurred in that case. *Id.* at 526, 723 N.E.2d at 225. The offense of predatory criminal sexual assault of a child had been created by an unconstitutional public act (Public Act 89-428 (eff. Dec. 13, 1995)), which rendered the statute void *ab initio*. *Id.* In other words, the offense of predatory criminal sexual assault of a child did not exist when defendant in *Tellez-Valencia* allegedly committed the acts in question.

¶ 20 In the case *sub judice*, the offense of armed robbery existed before enactment of Public Act 91-404. Public Act 91-404 amended the armed robbery statute; it did not create the offense of armed robbery. Plaintiff was not charged with a crime that did not exist.

¶ 21 Further, plaintiff was transferred to adult court pursuant to section 5-130(1)(a) of the Juvenile Court Act (705 ILCS 405/5-130(1)(a) (West 2004)). According to that subsection:

"The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with *** armed robbery when the armed robbery was committed with a firearm ***.

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State."

705 ILCS 405/5-130(1)(a) (West 2004).

¶ 22 Section 5-130(1)(a) was not dependent in any way on Public Act 91-404. Section 5-130(1)(a) existed before Public Act 91-404 became effective. See 705 ILCS 405/5-130(1)(a) (West 1998). In other words, juveniles could be transferred to adult court if they committed armed robbery with a firearm prior to the armed robbery statute making specific reference to firearms. See 720 ILCS 5/18-2 (West 1998).

¶ 23 Plaintiff does not dispute the fact he was armed with a firearm when the armed robbery in question was committed. As a result, his transfer to adult court was valid.

¶ 24 Plaintiff also argues his adult prison sentence is void even if his transfer to adult court was proper. According to plaintiff, he was only convicted of armed robbery with a dangerous weapon other than a firearm (720 ILCS 5/18-2(a)(1) (West 2004)). Armed robbery with a dangerous weapon is not an enumerated offense in section 5-130(1)(a) of the Juvenile Court Act (705 ILCS 405/5-130(1)(a) (West 2004)) for which defendant could have been transferred originally to criminal court. Since the State did not request a hearing for purposes of sentencing defendant as an adult pursuant to section 5-130(1)(c)(ii) (705 ILCS 405/5-130(1)(c)(ii) (West 2004)), the trial court should have proceeded under section 5-705 and 5-710 of the Juvenile Court Act (705 ILCS 405/5-705, 5-710 (West 2004)) in sentencing him.

¶ 25 Section 5-130(1)(c)(i) of the Juvenile Court Act states: "If after trial or plea the minor is convicted of any offense *covered by* paragraph (a) of this subsection (1), then, in sentencing the minor, the court shall have available any or all dispositions prescribed for that

offense under Chapter V of the Unified Code of Corrections." (Emphasis added.) 705 ILCS 405/5-130(1)(c)(i) (West 2004). Section 5-130(1)(a) states:

"The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with first degree murder, aggravated criminal sexual assault, aggravated battery with a firearm committed in a school, on the real property comprising a school, within 1,000 feet of the real property comprising a school, at a school related activity, or on, boarding, or departing from any conveyance owned, leased, or contracted by a school or school district to transport students to or from school or a school related activity regardless of the time of day or time of year that the offense was committed, armed robbery when the armed robbery was committed with a firearm, or aggravated vehicular hijacking when the hijacking was committed with a firearm.

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State."

705 ILCS 405/5-130(1)(a) (West 2004).

In *People v. King*, 241 Ill. 2d 374, 378, 948 N.E.2d 1035, 1036 (2011), our supreme court held "an offense 'covered by' section 5-130(1)(a) includes both charges 'specified in' that section and 'all other charges arising out of the same incident.' " Plaintiff's conviction for armed robbery with a dangerous weapon other than a firearm arose out of the same incident for which he was

charged with armed robbery with a firearm. As a result, the State was not required to request a hearing to determine whether plaintiff should have been sentenced as an adult.

¶ 26 Plaintiff also argues he could not have been convicted of armed robbery with a dangerous weapon other than a firearm because he was not charged with this offense and it is not a lesser-included offense of armed robbery with a firearm. However, this case did not go to trial. Plaintiff entered a guilty plea to armed robbery with a dangerous weapon other than a firearm. Assuming plaintiff entered a guilty plea to an uncharged offense, plaintiff does not explain how this entitles him to immediate release. As a result, we find this issue forfeited pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 16, 2013).

¶ 27 **III. CONCLUSION**

¶ 28 For the reasons stated above, we affirm the trial court's dismissal of plaintiff's request for *habeas corpus* relief.

¶ 29 Affirmed.