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2015 IL App (3d) 140865-U

Order filed September 1, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

JAMAL SHARIF,	)	Appeal from the Circuit Court
a/k/a Donald Nobles,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-14-0865
v.	)	Circuit No. 14-MR-289
	)	
TARRY WILLIAMS, Warden, Stateville	)	Honorable
Correctional Center,	)	Roger Rickman,
	)	Judge, Presiding.
Defendant-Appellee. <sup>1</sup>	)	

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Lytton and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The circuit court did not err in denying plaintiff's *habeas corpus* petition where the petition did not allege cognizable claims for which relief could be granted.

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<sup>1</sup> The plaintiff improperly named the People of the State of Illinois as the defendant-appellee. The proper defendant in a *habeas corpus* petition is the plaintiff's current custodian, in this case the warden of the Stateville Correctional Center. See *Hennings v. Chandler*, 229 Ill. 2d 18, 23 (2008).

¶ 2 Plaintiff, Jamal Sharif, formerly known as Donald Nobles, appeals the denial of his *habeas corpus* petition. In his *pro se* appeal, plaintiff argues that the trial court erred in finding that his petition did not allege a cognizable claim for *habeas* relief. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 In December 1978, following a jury trial, plaintiff was sentenced to natural life imprisonment for the murder of Clyde Davis and a concurrent term of 40-years imprisonment for the murder of Rosalyn Nesbitt. Those convictions and sentences were affirmed on direct appeal. *People v. Nobles*, 83 Ill. App. 3d 711, 717 (1980). In the ensuing 34 years, plaintiff filed several successive postconviction and *habeas* petitions, each of which was denied by the circuit court and affirmed on appeal. See *People v. Nobles*, 2012 IL App (4th) 100792. Plaintiff filed, *pro se*, the *habeas* petition that gave rise to the instant appeal on February 13, 2014, in which he maintained that the life sentence for the murder of Clyde Davis was improper because the trial court had provided the jury with a general verdict form rather than a specific verdict form for each count of murder related to the death of Davis. The petition did not challenge the 40-year imposed for the murder of Roselyn Nesbitt.

¶ 5 Plaintiff argued that he was entitled to immediate release pursuant to the holding in *People v. Bailey*, 2013 IL 113690, wherein our supreme court held that if a trial court denies a murder defendant's request for a separate verdict form for each count of a murder indictment, a general verdict must be interpreted as a conviction for felony murder, a verdict that permits only the imposition of a term-of-years sentence rather than a natural life sentence as was imposed upon the plaintiff in the present case. See *Bailey*, 2013 IL 113690, ¶¶ 64-65. The trial court

granted the defendant's motion to dismiss the petition, finding that plaintiff failed to state a cognizable claim for relief under the *habeas* statute. Plaintiff appeals from that judgment.

¶ 6

#### ANALYSIS

¶ 7

This court applies a *de novo* standard of review to a circuit court's dismissal of a *habeas* petition and will affirm the judgment on any grounds that appears in the record. *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008). A writ of *habeas corpus* is available only to obtain the immediate release of a prisoner: (1) who has been incarcerated under a judgment of a court that lacked jurisdiction of the subject matter or the person of the plaintiff; or (2) where there has been an occurrence subsequent to the prisoner's conviction that entitles him to be immediately released. *Freeman v. Cowan*, 331 Ill. App. 3d 219, 219-20 (2002). *Habeas* relief is limited solely to those two grounds and may not be used to review proceedings that do not exhibit one of these defects, even if the alleged error might involve the denial of a constitutional right. *Schlemm v. Cowen*, 323 Ill. App. 3d 318, 320 (2001). Illinois courts have consistently held that allegations of errors in sentencing, including arguments that an enhanced sentence is improper or unconstitutional based upon subsequent case law, are not cognizable claims in *habeas* proceedings. See *People v. Carroll*, 351 Ill. App. 3d 972, 975 (2004) (affirming dismissal because "a petition for *habeas corpus* was not appropriate avenue for relief" for a claim that extended term sentence was unconstitutional); *Freeman*, 331 Ill. App. 3d at 221 (claim that sentence is unconstitutional or otherwise imposed in error based upon new case law is not cognizable in *habeas* proceeding); *Schlemm*, 323 Ill. App. 3d at 322 (new supreme court case law did not constitute "postconviction event that would entitle [plaintiff] to release"); *People ex rel. Swiderski v. Brierton*, 65 Ill. App. 3d 154, 156 (1978) (new case law is not a subsequent occurrence or event that permits *habeas* relief).

¶ 8 Based upon overwhelming precedent, the plaintiff's argument that the recent holding in *Bailey* constitutes an occurrence that requires his immediate release must fail. Accordingly, we find that he has failed to raise a cognizable claim and we affirm the trial court's dismissal of his *habeas* petition.

¶ 9 We also find that the plaintiff is not entitled to *habeas* relief and the trial court properly denied his petition as he is not entitled to immediate release even if his argument regarding the natural life sentence were valid. Immediate release from custody is the only relief available to a *habeas* petitioner and the time during which he may be legally detained must be completely expired in order for *habeas* relief to be granted. *People ex rel. Burbank v. Irving*, 108 Ill. App. 3d 697, 700 (1982); *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 431 (1998). Here, the plaintiff has 3 years remaining on his 40-year sentence in the Nesbitt murder, a sentence that he does not challenge in his petition. Likewise, even if the natural life sentence for the Davis murder was improper, *habeas* relief would be unavailable until such time as the plaintiff had served the maximum non-extended term that could have been imposed on that conviction at the time of sentencing. *Taylor v. Cowan*, 339 Ill. App. 3d 406, 410-11 (2003); *Barney*, 184 Ill. 2d at 431. We take judicial notice that the plaintiff's maximum non-extended sentence in the Davis murder would have been 40 years. Ill. Rev. Stat. Ch. 38 § 1005-8-1 (1978). Thus, because the plaintiff is not eligible for immediate release even if his argument regarding the Davis conviction was valid, his *habeas* petition was properly denied by the trial court.

¶ 10 CONCLUSION

¶ 11 For the reasons stated, we affirm the judgment of the Will County circuit court denying plaintiff's *habeas corpus* petition.

¶ 12 Affirmed.