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2015 IL App (3d) 150314-U

Order filed October 26, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

RICHARD L. POOLE,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-15-0314
)	Circuit No. 13-MR-624
)	
MICHAEL LEMKE, Warden,)	Honorable
)	Roger D. Rickmon,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice McDade and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed Plaintiff's *habeas corpus* petition because his sentence was not void.

¶ 2 Plaintiff, Richard L. Poole, appeals the dismissal of his second *habeas corpus* petition filed in the Will County circuit court, arguing that his sentence was void for failure of the State to comply with enhanced sentencing requirements and could be challenged at any time. We affirm.

¶ 3

FACTS

¶ 4

In 1983, the State charged plaintiff with one count of armed robbery, a Class X felony, in violation of the Illinois Revised Statutes. The charging document alleged:

"Richard L. Poole otherwise called Joseph Jackson committed the offense of armed robbery in that he, by use of force and by threatening the imminent use of force while armed with a dangerous weapon, took United States currency from the person and presence of Kathleen Moldenhauer, in violation of Chapter 38, Section 18-2-A of the Illinois Revised Statutes 1981 as amended."

Plaintiff was found guilty of armed robbery, and, based on his prior convictions, was sentenced under the Habitual Criminal Act (Ill. Rev. Stat. 1983, ch. 38, ¶ 33B-1) to life imprisonment. The court affirmed his conviction and sentence for the Class X felony on direct appeal. *People v. Poole*, 167 Ill. App. 3d 7 (1988).

¶ 5

In 2001, plaintiff filed a *habeas corpus* petition in the Will County circuit court, arguing that his life sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Poole v. Briley*, No. 3-02-0215 (2003) (unpublished order under Supreme Court Rule 23). The circuit court dismissed the petition. *Id.* On appeal, this court granted the State Appellate Defender's motion to withdraw, stating that the petition was properly dismissed as *Morissette v. Briley*, 326 Ill. App. 3d 590 (2001), held that the Habitual Criminal Act does not violate *Apprendi*. *Id.*

¶ 6

In March 2013, plaintiff filed a second *habeas corpus* petition in the Will County circuit court arguing that his sentence was void for the State's failure to include in the charging instrument the prior convictions used to "enhance" his sentence. Defendant moved to dismiss the complaint, and the circuit court granted the motion. The court also denied Plaintiff's motion for reconsideration by stating, "The Court being fully advised in the premises, finds that

Plaintiff's original sentence was not, and, is not void and that this matter is barred by the doctrine of *res judicata*."

¶ 7

ANALYSIS

¶ 8

On appeal, plaintiff argues his sentence exceeded the range of punishment for the Class X felony of armed robbery, is void because the State did not provide him with notice of a potential "enhanced sentence" by listing his prior convictions in the charging instrument as required by statute, and should be reduced accordingly. In support of his argument, plaintiff cites section 111-3(c) of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3(c) (West 2012)). Upon review, we hold that plaintiff's life sentence was not an "enhanced sentence" for purposes of section 111-3(c).

¶ 9

At the outset, we reject the defendant's argument that plaintiff's voidness assertion is barred by *res judicata*. "Because a party may attack a void sentence literally 'at any time, either directly or collaterally' (*People v. Wade*, 116 Ill. 2d 1, 5-6 (1987)), *res judicata* or the doctrine of waiver would not prevent a party from doing so (*People v. Muntaner*, 339 Ill. App. 3d 887, 891 (2003))." *People v. Harper*, 345 Ill. App. 3d 276, 285 (2003). As plaintiff can raise an argument that his sentence is void at anytime, his claim here is not barred by *res judicata*. We now turn to the merits of the case.

¶ 10

Section 111-3(c) of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3(c) (West 2012)), states, "When the State seeks an enhanced sentence because of a prior conviction, the charge shall also state the intention to seek an enhanced sentence and shall state such prior conviction so as to give notice to the defendant." The statute defines an enhanced sentence as follows:

"For the purposes of this Section, 'enhanced sentence' means a sentence which is increased by a prior conviction from one classification of offense to another higher level classification of offense set forth in Section 5-4.5-10 of the Unified Code of Corrections (730 ILCS 5/5-4.5-10); it does not include an increase in the sentence applied within the same level of classification of offense." 725 ILCS 5/111-3(c) (West 2012).

¶ 11 In this case, plaintiff was convicted of armed robbery under section 18-2 (Ill. Rev. Stat. 1981, ch. 38, ¶ 18-2), which is a Class X felony. The range of punishment for a Class X felony is 6 to 30 years' imprisonment. Ill. Rev. Stat. 1981, ch. 38, ¶ 1005-8-1(a)(3). However, based on his criminal history, the court sentenced plaintiff to serve a term of natural life imprisonment as a convicted Class X offender qualifying as a habitual criminal. Ill. Rev. Stat. 1981, ch. 38, ¶ 1005-8-1(a)(2). Therefore, we conclude that plaintiff's life sentence was not an "enhanced sentence" for purposes of section 111-3(c) of the statute because the prior offenses did not increase the classification of the offense and corresponding range of punishment for the increased classification. See 725 ILCS 5/111-3(c) (West 2012).

¶ 12 Additionally, we note the statute that plaintiff relies upon was not in effect at the time he was charged and sentenced in 1983 and did not take effect until 1990. See Pub. Act 86-964, § 1 (eff. July 1, 1990) (amending Ill. Rev. Stat. 1989, ch. 38, ¶ 111-3).¹ It is for these reasons that we conclude plaintiff is not entitled to a reduction of his sentence.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Will County is affirmed.

¶ 15 Affirmed.

¹This section was renumbered as 725 ILCS 5/111-3 (West 2012).