

**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).

2015 IL App (4th) 140665-U

NO. 4-14-0665

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 7, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

JAMES TAYLOR,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Vermilion County
CHRISTINE BRANNON, Warden, Danville	)	No. 13MR241
Correctional Center; and THE ILLINOIS	)	
PRISONER REVIEW BOARD,	)	Honorable
Defendants-Appellees.	)	Mark S. Goodwin,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Justices Holder White and Appleton concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Because the State failed to address plaintiff's claim he was entitled to immediate release, it is not clearly apparent no set of facts entitle plaintiff to *habeas corpus* relief and the motion to dismiss plaintiff's *pro se* complaint was improperly granted.
- ¶ 2 In November 2013, plaintiff, an inmate, filed a *pro se* complaint for relief under the Habeas Corpus Act (Act) 735 ILCS 5/10-101 *et seq.* (West 2012)). Plaintiff, who was sentenced to indeterminate prison sentences of 100 to 200 years for murder and 6 to 20 years for kidnapping in October 1976, asserts he was unconstitutionally deprived of his right to receive a determinate sentence when the legislature changed the sentencing scheme in 1978. Plaintiff asserts, in part, he was denied equal protection under the laws when the legislature granted prisoners with lesser sentences the option to receive a determinate sentence but denied him the

same right. Plaintiff alleges he is entitled to release because he served the time he would have received had he been given a determinate sentence. The State moved to dismiss the complaint, arguing plaintiff's complaint fails to state a claim for *habeas* relief. The trial court agreed and dismissed the petition.

¶ 3 Plaintiff appeals, arguing his complaint was improperly dismissed as he states a claim for *habeas* relief. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 According to his complaint, plaintiff was convicted following a jury trial in Effingham County in October 1976 of murder and kidnapping. Plaintiff asserted he was convicted and sentenced under indeterminate sentencing laws. Plaintiff is currently serving concurrent prison sentences of 100 to 200 years for murder and 6 to 20 years for kidnapping. The complaint and supporting materials show plaintiff was convicted of the murder of a police officer and the kidnapping of another individual. Fifth District's judgment on plaintiff's direct appeal shows plaintiff had a "less aggressive role" during the murder and kidnapping, *People v. Taylor*, No. 77-159, slip order at 22 (Sept. 15, 1978) (unpublished order under Supreme Court Rule 23). This court observed plaintiff did not fire the murder weapon, did not cause the injuries to the kidnapping victim, and had no prior convictions.

¶ 6 Plaintiff further alleged in his complaint, in February 1978, the General Assembly enacted laws that set up determinate sentencing. Plaintiff contended his continued imprisonment under the abolished indeterminate sentencing violates his due-process and equal-protection rights.

¶ 7 In his complaint, plaintiff set forth two main arguments. First, plaintiff

maintained once the determinate sentencing law was enacted, the old law became invalid and unenforceable. Second, plaintiff contended the General Assembly violated his rights to equal protection by allowing those with indeterminate sentences to seek determinate sentences under the new scheme, but it denied him and others with minimum sentences at 20 years or more the same right. Ill. Rev. Stat. 1979, ch. 38, ¶ 1003-3-2.1(b) ("No release date under this Section shall be set for any person sentenced to an indeterminate sentence under the law in effect prior to the effective date of this amendatory Act of 1977 in which the minimum term of such sentence is 20 years or more."). Plaintiff further alleged, had he not been denied equal protection of the law and been sentenced under determinate-sentencing laws, he served his time and is entitled to release:

"Petitioner[s] legal argument that the indeterminate statute is invalid and unenforceable as law became relevant in that, the maximum term under the Determinate Sentencing Act when enacted was 40 years, and with the day[-]for[-]day good[-]time provisions adds up to 20 years of prison time. Petitioner has served 37 years of incarceration with the added 3 years of parole time, which comes to a total of 77 years, and the petitioner has more than completed the 40 years' maximum term."

¶ 8 In March 2014, the State moved to dismiss plaintiff's complaint under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). In its motion, the State alleged plaintiff failed to state a claim for *habeas* relief. The State argued *habeas* relief was inappropriate as the court in which plaintiff was convicted had jurisdiction and plaintiff had not

established he was entitled to immediate release. Regarding the latter argument, the State relied on section 3-3-2.1(b) of the Unified Code of Corrections (Code) (730 ILCS 5/3-3-2.1(b) (West 2012)), as establishing plaintiff is not entitled to a determinate sentence, and argued plaintiff's term of 100 to 200 years had not expired.

¶ 9 The trial court agreed with the State and granted the motion. This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, as in its motion to dismiss, the State asserts plaintiff failed to state a claim upon which relief could be granted because plaintiff's claims were not cognizable under the Act. Section 10-124 of the Act (735 ILCS 5/10-124 (West 2012)) sets forth seven bases for which a prisoner may be granted *habeas corpus* relief. These bases fall into two categories: (1) the trial court lacked jurisdiction over the prisoner, or (2) some occurrence subsequent to the prisoner's conviction entitles the prisoner to release. *People v. Gosier*, 205 Ill. 2d 198, 205, 792 N.E.2d 1266, 1270 (2001). If a plaintiff's claim does not fit within one of these categories, *habeas* relief is improper, even if the plaintiff alleges he was denied his constitutional rights. *People v. Purnell*, 356 Ill. App. 3d 524, 528, 825 N.E.2d 1234, 1238 (2005).

¶ 12 A motion to dismiss under section 2-615 "tests the legal sufficiency of the plaintiff's claim." *Wallace v. Smyth*, 203 Ill. 2d 441, 447, 786 N.E.2d 980, 984 (2002). When considering a section 2-615 motion to dismiss, a trial court must determine whether the complaint's allegations, " 'when viewed in a light most favorable to the [nonmovant], are sufficient to state a cause of action upon which relief can be granted.' " *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 406 Ill. App. 3d 325, 335, 943 N.E.2d 646, 654-55 (2010)

(quoting *Canel v. Topinka*, 212 Ill. 2d 311, 317, 818 N.E.2d 311, 317 (2004)). The court should not grant the motion unless it is clearly apparent no set of facts can be proved entitling plaintiff to relief. *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161, 920 N.E.2d 220, 223 (2009). We review a dismissal under section 2-615 *de novo*. *Cummings v. City of Waterloo*, 289 Ill. App. 3d 474, 479, 683 N.E.2d 1222, 1225 (1997).

¶ 13 Plaintiff disputes the State's conclusion no occurrence after his conviction and sentence entitles him to immediate release. Plaintiff's complaint and his argument on appeal show he contends he is entitled to immediate release. Plaintiff alleges (1) section 3-3-2.1(b) of the Code, enacted after he was sentenced, unconstitutionally denies him his right of equal protection by denying him the option of seeking a determinate sentence as given to other prisoners with lesser sentences; (2) had he been given the same treatment as other prisoners, he would have been sentenced under the determinate sentences at the time, with the maximum of a 40-year term; and (3) he served 37 years and, with his day-for-day good-conduct credit, he has served the full sentence he should have received under the determinate-sentencing scheme and is thus entitled to release.

¶ 14 The State does not address this argument. The State instead ignores plaintiff's equal-protection argument and challenge to section 3-3-2.1(b) and relies on the same section as showing plaintiff was not entitled to a determinate sentence. The State also does not challenge plaintiff's contention he would have been sentenced to a maximum 40-year term, under the law at the time.

¶ 15 The State's failure to address plaintiff's argument is disappointing. At present, it is not clearly apparent no facts can be proved entitling plaintiff to relief. While plaintiff's claims

may ultimately fail, this court will not research the State's argument and make an argument on behalf of the State. Under these circumstances, the plaintiff's complaint was improperly dismissed.

¶ 16

### III. CONCLUSION

¶ 17

We reverse the trial court's judgment and remand for further proceedings.

¶ 18

Reversed and remanded.