2015 IL App (4th) 140968-U

NO. 4-14-0968

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 11, 2015
Carla Bender
4th District Appellate
Court, IL

ALLAN P. AUSTIN,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	McLean County
DON R. EVERHART, JR.,	)	No. 14MR108
Defendant-Appellee.	)	
	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Pope and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's dismissal of the plaintiff's *mandamus* petition but remanded with directions to address the merits of the plaintiff's voidness claim in his criminal case.

¶ 2 In December 1998, a jury convicted plaintiff, Allan P. Austin, of 11 separate felonies in McLean County case No. 98-CF-482. Although plaintiff was 16 years old when the offenses took place, he was transferred to criminal court and tried as an adult pursuant to section 5-4 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-4 (West 1996)). In January 1999, the trial court sentenced plaintiff to 80 years in prison. Plaintiff has spent nearly all of his years in prison filing *pro se* pleadings challenging his convictions and sentence at every level of the state and federal courts. In April 2007, the trial court declared plaintiff a "vexatious litigant of Dickensian proportions" and ordered the circuit clerk, defendant Don R. Everhart, Jr., to not accept any more pleadings from plaintiff unless plaintiff first obtained leave of the court

and paid all appropriate fees.

¶ 3 In February 2014, plaintiff *pro se* filed what he titled a petition for *mandamus*, in which he essentially alleged that his convictions and sentence were void, but that he could not meaningfully challenge those void judgments because defendant unlawfully refused to present his pleadings to the trial court. In October 2014, the court granted defendant's motion to dismiss plaintiff's *mandamus* petition, with prejudice.

¶ 4 Plaintiff *pro se* appeals, arguing that his transfer from juvenile court to criminal court in May 1998 was void because section 5-4 of the Juvenile Court Act was void. See *People v. Brown*, 225 Ill. 2d 188, 866 N.E.2d 1163 (2007) (noting that section 5-4 of the Juvenile Court Act was void *ab initio*). For his part, defendant focuses his appellate argument on the gross deficiencies in plaintiff's *mandamus* petition and *pro se* appellate brief. We agree that the trial court properly dismissed plaintiff's *mandamus* petition. However, because the record before us suggests that plaintiff's May 1998 transfer to criminal court was indeed void under *Brown*, we remand with directions to (1) appoint counsel to represent plaintiff and raise that claim in plaintiff's criminal case (McLean County case No. 98-CF-482), and (2) address the merits of plaintiff's claim under *Brown*.

¶ 5 I. BACKGROUND

¶ 6 Our previous decisions have thoroughly discussed plaintiff's criminal case. See *People v. Austin*, 2014 IL App (4th) 140408, ¶¶ 5-14, 23 N.E.3d 615 (reviewing the history of plaintiff's criminal case and collecting this court's previous decisions). For purposes of this appeal, we confine our review of the facts to those pertinent to the issue before us.

¶ 7 The record before us is limited to the papers filed in this *mandamus* action. Among those papers is copy of a motion from plaintiff's original criminal case, titled "Motion for

Permission for Adult Prosecution" (hereinafter, transfer motion), filed by the McLean County State's Attorney in May 1998. The transfer motion states, in pertinent part, "NOW COMES [the State] and pursuant to 705 ILCS 405/5-4 [(West 1996)], moves before the Court for permission to prosecute ALLAN AUSTIN under the criminal law of the State of Illinois." Defendant does not contest the authenticity of the transfer motion, which plaintiff attached as an exhibit to his *mandamus* petition.

¶ 8 Although the record before us does not include an order from plaintiff's criminal case granting the State's transfer motion, we take judicial notice of our previous decisions involving plaintiff's criminal case, which make clear that the trial court granted the transfer motion and transferred plaintiff's case from juvenile court to criminal court. See *People v. Donley*, 2015 IL App (4th) 130223, ¶ 15, ___ N.E.3d ___ ("the appellate court may take judicial notice of its own records"); *Austin*, 2014 IL App (4th) 140408, ¶¶ 5, 7, 23 N.E.3d 615 (detailing plaintiff's criminal convictions and sentence). As already noted, after plaintiff's transfer to criminal court pursuant to section 5-4 of the Juvenile Court Act, he was tried before a jury, convicted, and sentenced to 80 years in prison for crimes he allegedly committed at the age of 16.

¶ 9 The trial court proceedings in this *mandamus* action focused on the sufficiency of plaintiff's *mandamus* petition—specifically, whether plaintiff had sufficiently alleged that defendant failed to perform a nondiscretionary official duty in his handling of plaintiff's *pro se* postconviction filings. In October 2014, the court granted defendant's motion to dismiss plaintiff's *mandamus* petition.

¶ 10 This appeal followed.

¶ 11 II. PLAINTIFF'S TRANSFER TO CRIMINAL COURT

¶ 12 We decline to address the merits of plaintiff's *mandamus* petition in this appeal

because, quite frankly, doing so would be a waste of judicial resources and of benefit to no one. In that same vein, we see no reason to avoid addressing what might very well be a meritorious voidness claim embedded in plaintiff's *mandamus* petition. After all, plaintiff filed that petition for the sole purpose of obtaining judicial review of his voidness claim. "It is a well-settled principle of law that a void order may be attacked at any time or in any court, either directly or collaterally." *People v. Thompson*, 209 Ill. 2d 19, 25, 805 N.E.2d 1200, 1203 (2004). Accordingly, we now turn to the merits of plaintiff's voidness claim.

¶ 13 Section 5-4 of the Juvenile Court Act, the statute under which plaintiff was transferred from juvenile court to criminal court in May 1998, was enacted as part of Public Act 88-680 (eff. Jan. 1, 1995), commonly known as the Safe Neighborhoods Law. As the supreme court noted in *Brown*, 225 Ill. 2d at 193, 866 N.E.2d at 1166, the Safe Neighborhoods Law added a rebuttable presumption to section 5-4(3.3) of the Juvenile Court Act (705 ILCS 405/5-4(3.3) (West 1996)), which provided that if a juvenile was charged with a Class X felony and the trial court found probable cause to believe the allegations were true, a rebuttable presumption existed that the juvenile should be transferred from juvenile court to criminal court. The State's May 1998 transfer motion, which the court granted, sought to transfer plaintiff to criminal court under the authority of this statute.

¶ 14 In *People v. Cervantes*, 189 Ill. 2d 80, 91, 723 N.E.2d 265, 270 (1999), the supreme court declared the Safe Neighborhoods Law unconstitutional because it violated the single-subject clause of the Illinois Constitution of 1970 (Ill. Const. 1970, art. IV, § 8(d)). As a result, all of the statutes enacted under the Safe Neighborhoods Law, including section 5-4 of the Juvenile Court Act, were void *ab initio*. *Brown*, 225 Ill. 2d at 198-99, 866 N.E.2d at 1169.

¶ 15 In *Brown*, the defendant was transferred pursuant to section 5-4 of the Juvenile

Court Act in February 1998 (*id*. at 193, 866 N.E.2d at 1166), three months before the State filed its transfer motion in plaintiff's case. The *Brown* court concluded that the defendant's transfer was void, explaining as follows:

> "[T]he statutory provisions pursuant to which defendant's transfer was carried out were enacted as part of the Safe Neighborhoods Law (Public Act 88-680), a statute which we found to be unconstitutional in [*Cervantes*]. Under the established precedent of this court, a statute which violates the single-subject clause is void in its entirety. [Citation.] As a result, all of the provisions of the Safe Neighborhoods Law, including the specific provisions amending the [Juvenile Court Act] pursuant to which defendant was transferred to criminal court, are invalid. More than that, they are void *ab initio.* As such, they have no force or effect. It is as if they had never been passed. [Citation.]
>
> When a court exercises its authority over a minor pursuant to the [Juvenile Court Act], as the court did here in entertaining the State's transfer petition, it must proceed within the confines of that law and has no authority to act except as that law provides. [Citation.] Because the particular statutory provisions under which defendant was transferred are void *ab initio* and have never had any valid legal force, it necessarily follows that the transfer itself can be afforded no legal recognition. The transfer is void just as the transfer statute is void. Defendant must therefore be granted a new

transfer hearing." *Id.* at 198-99, 866 N.E.2d at 1169.

¶ 16 The *Brown* court further held that, on remand, the new transfer hearing should be conducted pursuant to the law in effect prior to the enactment of the Safe Neighborhoods Law, which did not set forth a rebuttable presumption in favor of transfer to criminal court. *Id*. at 202, 866 N.E.2d at 1171. If the trial court determined, following the new transfer hearing on remand, that transfer was warranted, the defendant's existing conviction would be unaffected. *Id*. at 203, 866 N.E.2d at 1171. However, if the court determined that transfer was not warranted under the law in effect prior to the Safe Neighborhoods Law, the defendant's criminal conviction and sentenced must be reversed. *Id*. at 202, 866 N.E.2d at 1171.

¶ 17 Based upon the limited record before us, it appears as though the supreme court's decision in *Brown* might be fully applicable to plaintiff's criminal case. Accordingly, although we affirm the trial court's dismissal of plaintiff's *mandamus* petition, we remand with directions for the trial court to (1) recharacterize plaintiff's *mandamus* petition as a postconviction petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2012)); (2) appoint counsel, who should be directed to file an amended postconviction petition that raises the *Brown* claim in plaintiff's criminal case (McLean County case No. 98-CF-482); and (3) proceed to stage two of the postconviction proceedings upon the postconviction petition counsel files. (The supreme court's opinion in *Brown* should provide ample guidance for the appropriate analysis and procedures to be followed on remand.)

¶ 18 We note that recharacterization of plaintiff's *mandamus* petition as a postconviction petition is appropriate in this case because "it is well settled that, where a *pro se* pleading alleges a deprivation of constitutional rights cognizable under the [Post-Conviction Hearing] Act, a trial court may treat the pleading as a postconviction petition" even if it is clearly

labeled as something else. *People v. Shellstrom*, 216 Ill. 2d 45, 51, 833 N.E.2d 863, 867 (2005).

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's judgment and remand for further proceedings consistent with this order.

¶ 21 Affirmed and remanded with directions.