

**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) 140980-U

NO. 4-14-0980

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

August 25, 2015

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
EZRA U. GAVIN,	)	No. 02CF81
Defendant-Appellant.	)	
	)	Honorable
	)	William O. Mays,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* Petition's claim for relief under the Habeas Corpus Act (735 ILCS 5/10-101 *et seq.* (West 2014)) was properly dismissed as petition failed to assert an error for which *habeas* relief may be granted.

¶ 2 In September 2014, defendant, an inmate, filed a *pro se* petition for writ of *habeas corpus* under the Habeas Corpus Act (735 ILCS 5/10-101 *et seq.* (West 2014)). The trial court denied the petition. Defendant appeals the denial, asserting his consecutive sentences are unconstitutional. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In May 2002, a jury convicted defendant of three drug-related offenses: (1) unlawful possession with intent to deliver more than 100 grams but less than 400 grams of cocaine (720 ILCS 570/401(a)(2)(B) (West 2002)) (count I); (2) unlawful possession with intent

to deliver more than 15 grams but less than 100 grams of cocaine (720 ILCS 570/401(a)(2)(A) (West 2002)) (count II); and (3) permitting unlawful use of a building (720 ILCS 570/406.1 (West 2002)) (count III). The trial court sentenced him to 15 years' imprisonment on count I to be served consecutively to 25 years' imprisonment on count II. At sentencing, the trial court stated consecutive sentences were mandatory. See *People v. Gavin*, 2013 IL App (4th) 120691-U, ¶ 10 (unpublished order under Supreme Court Rule 23).

¶ 5 Since sentencing, defendant has asserted multiple challenges to his conviction or sentence. On direct appeal, defendant asserted the State failed to prove him guilty beyond a reasonable doubt. This court, in December 2004, affirmed defendant's conviction. *People v. Gavin*, No. 4-02-0571 (Dec. 8, 2004) (unpublished order under Supreme Court 23). In February 2005, defendant filed a *pro se* petition for postconviction relief (725 ILCS 5/122-1 to 122-8 (West 2004)). In his *pro se* petition and two amended petitions, defendant argued, in part, his sentences were unconstitutional because they violated his right to due process and equal protection. The trial court dismissed the petition, and this court affirmed. See *People v. Gavin*, 4-06-0912 (Aug. 27, 2008) (unpublished order under Supreme Court Rule 23). In June 2010, defendant filed a *pro se* petition seeking leave to file a successive postconviction petition. The trial court denied the petition, and this court affirmed on appeal. *People v. Gavin*, 2011 IL App (4th) 100637-U (unpublished order under Supreme Court Rule 23).

¶ 6 In May 2012, defendant filed a *pro se* petition for relief from judgment under section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2010)), challenging his sentence. Defendant argued the court erred "when it imposed a sentence without statutory authority." See *People v. Gavin*, 2013 IL App (4th) 120691-U, ¶ 16. The trial court

dismissed the petition *sua sponte*; defendant appealed. *Id.* On appeal, defendant argued section 5-8-4(a)(iii) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-4(a)(iii) (West 2002)) did not mandate a consecutive sentence, but the trial court sentenced him believing it did. *Id.* at ¶¶ 29-30. This court agreed, but determined because petitioner's consecutive sentences found support in section 5-8-4(b) of the Unified Code (730 ILCS 5/5-8-4(b) (West 2002)), which authorizes discretionary consecutive sentences when the record shows the sentencing court was of the opinion a consecutive term was necessary for the public's protection, defendant's sentences were not void. See *id.* ¶ 30 (citing *People v. Land*, 304 Ill. App. 3d 169, 174, 710 N.E.2d 471, 474 (1999)). Absent a determination the sentences were void, defendant's section 2-1401 petition was untimely and this court affirmed the *sua sponte* dismissal. *Id.*

¶ 7 In September 2014, defendant filed a *pro se* petition for *habeas* relief. Defendant asserted the trial court lacked authority to order him to serve consecutive sentences under section 5-8-4(a)(iii) and the court failed to make the necessary determination for section 5-8-4(b) to apply. Defendant maintained he was therefore held beyond the time he could legally be detained.

¶ 8 The trial court dismissed defendant's *habeas* petition *sua sponte*. The court noted defendant had filed a number of petitions or motions attacking his consecutive sentences and conviction.

¶ 9 The trial court concluded it had jurisdiction over defendant and defendant failed to raise an issue not previously addressed.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Defendant argues his consecutive sentences are improper as the trial court believed they were mandatory under section 5-8-4(a)(iii) of the Unified Code (730 ILCS 5/5-8-4(a)(iii) (West 2002)). Defendant maintains his sentences thus violate his rights to due process, equal protection, and a fair hearing.

¶ 13 The Habeas Corpus Act sets forth seven grounds upon which a prisoner may attain *habeas* relief. 735 ILCS 5/10-124 (West 2014). Our supreme court summarized these seven grounds as two categories: (1) the trial court lacked jurisdiction over the prisoner, and (2) an occurrence after the conviction entitles the prisoner to release. *People v. Gosier*, 205 Ill. 2d 198, 205, 792 N.E.2d 1266, 1270 (2001); see also *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430, 704 N.E.2d 350, 351 (1998) ("It is well established that a writ of *habeas corpus* is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court which 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 which entitled him to release."). A petition for *habeas* relief may not be used to permit review of proceedings that do not fall within these categories, "even though the alleged error involves a denial of constitutional rights." *Barney*, 184 Ill. 2d at 430, 704 N.E.2d at 351; see also *People v. Purnell*, 356 Ill. App. 3d 524, 528, 825 N.E.2d 1234, 1238 (2005).

¶ 14 Defendant's petition for writ of *habeas corpus* does not fall within the recognized categories for which such relief may be granted. Defendant is not challenging the trial court's jurisdiction and does not assert an event occurred after his sentence and conviction that entitles him to release. Defendant, instead, claims his constitutional rights were violated as he has before. Relief under the Habeas Corpus Act is not permissible. See *Purnell*, 356 Ill. App. 3d at

528, 825 N.E.2d at 1238.

¶ 15 We note a *habeas* petition may properly attack a void order. See *Beacham v. Walker*, 231 Ill. 2d 51, 58-59, 896 N.E.2d 327, 332 (2008). However, this court has already determined the sentences defendant received are not void. See *People v. Gavin*, 2013 IL App (4th) 120691-U, ¶ 30. *Res judicata* bars a repeated review of the same claim.

¶ 16 Defendant's case law is not persuasive. For example, two of the cases defendant relies upon in his petition for writ of *habeas corpus* are dated before his petition and cannot, therefore, be the basis for the argument an event occurred after his sentence that entitles him to relief. See *People v. Cannon*, 65 Ill. 2d 366, 357 N.E.2d 1180 (1976); *People v. Wilder*, 325 Ill. App. 3d 987, 760 N.E.2d 496 (2001). In addition, *Wilder* involved a direct appeal in which the doctrine of forfeiture does not apply as it does in petitions for *habeas* relief.

¶ 17 The trial court properly denied defendant's petition for *habeas* relief.

¶ 18 III. CONCLUSION

¶ 19 We affirm the trial court's judgment.

¶ 20 Affirmed.