

NOTICE
Decision filed 06/16/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140416-U

NO. 5-14-0416

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<p>OTIS STEWART,</p> <p style="padding-left: 40px;">Plaintiff-Appellant,</p> <p>v.</p> <p>STEPHEN DUNCAN,¹</p> <p style="padding-left: 40px;">Defendant-Appellee.</p>	<p>)</p>	<p>Appeal from the</p> <p>Circuit Court of</p> <p>Lawrence County.</p> <p>No. 13-MR-65</p> <p>Honorable</p> <p>Robert M. Hopkins,</p> <p>Judge, presiding.</p>
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JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Cates and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held:* Where the circuit court had the jurisdiction to convict the plaintiff, the circuit court's order dismissing the plaintiff's petition for *habeas corpus* relief is affirmed.

¹Stephen Duncan is the current warden of Lawrence Correctional Center, where the plaintiff is incarcerated. Pursuant to section 10-107 of the Code of Civil Procedure (735 ILCS 5/10-107 (West 2008)), Duncan should be substituted as the defendant in this action. See *Hennings v. Chandler*, 229 Ill. 2d 18, 23-24 n.2 (2008) (the proper defendant in a *habeas corpus* action is the plaintiff's current custodian).

¶ 2 The plaintiff, Otis Stewart, is currently incarcerated at the Lawrence Correctional Center, where, as explained above, he is in the custody of Stephen Duncan, the warden of the facility. The plaintiff appeals the circuit court's *sua sponte* dismissal of his complaint for *habeas corpus* relief. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 Following a jury trial in the circuit court of Madison County in 2002, the plaintiff was convicted of home invasion and aggravated discharge of a firearm. He was sentenced to a term of 55 years in prison. On direct appeal, this court affirmed his convictions and sentence. See *People v. Stewart*, 342 Ill. App. 3d 350 (2003).

¶ 5 In 2003, the plaintiff filed a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)), arguing that his convictions were void because the circuit court had not conducted a preliminary hearing on the State's amended information. The circuit court dismissed the petition, and the plaintiff did not appeal. See *People v. Stewart*, 2014 IL App (5th) 120471-U. The plaintiff then filed a petition for postconviction relief. The circuit court denied that petition, and this court affirmed. See *People v. Stewart*, 2012 IL App (5th) 100292-U. The plaintiff also filed at least one subsequent petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). The circuit court dismissed that petition and this court affirmed. See *People v. Stewart*, 2014 IL App (5th) 120471-U.

¶ 6 On October 28, 2013, the plaintiff filed the instant *habeas corpus* complaint. In it, the plaintiff argued that his convictions are void because the circuit court lacked

jurisdiction to convict him. He argued that the circuit court lacked jurisdiction because it failed to conduct a preliminary hearing after the State filed an amended information. The circuit court *sua sponte* dismissed the *habeas* petition. The plaintiff appeals.

¶ 7

ANALYSIS

¶ 8 We review the *sua sponte* dismissal of a *habeas corpus* petition *de novo*. *Hennings v. Chandler*, 229 Ill. 2d 18, 31-32 (2008). *Habeas corpus* relief is a narrow remedy that is available in limited circumstances. *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125 (2006). "The sole remedy or relief authorized by a writ of *habeas corpus* is the prisoner's immediate release from custody." *Id.* The remedy is available only if (1) the circuit court lacked jurisdiction to enter judgment, or (2) some postconviction occurrence entitles the inmate to immediate release from custody. *People v. Gosier*, 205 Ill. 2d 198, 205 (2001). *Habeas* relief is available when the time during which the plaintiff can be legally detained has expired. *Faheem-El v. Klinicar*, 123 Ill. 2d 291, 295 (1988). A *habeas* complaint may not be used to review proceedings that do not allege one of the aforementioned defects, even if the alleged error involves a denial of a constitutional right. *Id.*

¶ 9 Subject-matter jurisdiction is conferred on the circuit courts by the Illinois Constitution. *People v. Gilmore*, 63 Ill. 2d 23, 26 (1976). The circuit court obtains subject-matter jurisdiction when the State creates a justiciable controversy by leveling criminal charges against a defendant and filing them with the court. *People v. Woodall*, 333 Ill. App. 3d 1146, 1156 (2002). Personal jurisdiction over a criminal defendant is conferred upon the circuit court when the defendant personally appears before it. *People*

v. Raczkowski, 359 Ill. App. 3d 494, 497 (2005). Jurisdiction is not conferred by information or indictment, but rather by constitutional provisions. *People v. Benitez*, 169 Ill. 2d 245, 256 (1996). A charging instrument that fails to charge an offense does not divest the circuit court of jurisdiction. *Id.* A defective indictment is not a proper ground for *habeas corpus* relief. *Watkins v. Page*, 322 Ill. App. 3d 360, 366 (2001).

¶ 10 Here, the plaintiff argues that the court did not have jurisdiction because it failed to conduct a preliminary hearing on the amended indictment. However, that did not divest the circuit court of jurisdiction. The court had subject-matter jurisdiction when the State filed charges, and the court had personal jurisdiction over the plaintiff when he was brought before the court. Thus, the court did not lack jurisdiction to convict the plaintiff.

¶ 11 Further, the plaintiff's claim is barred by *res judicata*. *Res judicata* precludes the relitigation of an issue that was previously decided in another case if the court rendered a final judgment in the prior case, the party against whom estoppel is asserted was a party in the previous case, and the issue that the court decided in the prior case is identical to the issue presented in the instant case. *Cooney v. Rossiter*, 2012 IL 113227, ¶ 18. Here, the plaintiff raised the same claim—that the circuit court lacked jurisdiction because it did not conduct a preliminary hearing on the State's amended information—in his original petition for relief from judgment. See *People v. Stewart*, 2014 IL App (5th) 120471-U. The circuit court dismissed that petition and the plaintiff did not appeal. *Id.* Because the plaintiff's sole claim in this appeal has already been litigated and the circuit court rendered a final judgment, the plaintiff's argument in this appeal is barred by *res judicata*.

¶ 12

CONCLUSION

¶ 13 For the foregoing reasons, the judgment of the circuit court of Lawrence County is affirmed.

¶ 14 Affirmed.