

NOTICE
Decision filed 11/04/15. 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) 140459-U

NO. 5-14-0459

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).

NATHANIEL HILL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Randolph County.
)	
v.)	No. 14-MR-72
)	
KIM BUTLER, Warden,)	Honorable
)	Eugene E. Gross,
Defendant-Appellee.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersch and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* Where the complaint was insufficient on its face to warrant any *habeas corpus* relief, the circuit court's *sua sponte* dismissal of the plaintiff's *habeas corpus* complaint is affirmed.

¶ 2 The plaintiff, Nathaniel Hill, is currently incarcerated at Menard Correctional Center in Menard, Randolph County, Illinois, where he is in the custody of the defendant, Kim Butler, the warden of the facility. He appeals the *sua sponte* dismissal of his petition for a writ of *habeas corpus*. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 On April 28, 2005, the plaintiff was charged with two counts of first-degree murder in Madison County case number 05-CF-1079. Following an October 2008 bench trial he was found guilty of one count of first-degree murder and was later sentenced to 60 years' imprisonment. The plaintiff appealed, arguing, *inter alia*, that he had been denied his right to a speedy trial. More specifically, he argued that the trial court erred in attributing to him delays caused by defense counsel's numerous motions for continuance when he had made clear his opposition to those continuances. We rejected this argument and affirmed the trial court's judgment. *People v. Hill*, 2011 IL App (5th) 090085-U.

¶ 5 On August 11, 2014, the plaintiff, through counsel, filed a petition for writ of *habeas corpus*. He again claimed that he had been denied his right to a speedy trial, this time arguing that counsel's numerous motions for continuances should not have been granted because counsel's motions were not in writing, as required by section 114-4(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-4(b) (West 2012)). On August 18, 2014, the trial court, prior to a response from the defendant, dismissed the plaintiff's complaint *sua sponte*. The plaintiff filed this timely appeal.

¶ 6

ANALYSIS

¶ 7 On appeal, the plaintiff reiterates his claim that the continuances which defense counsel requested and which were charged to him should not have been granted because counsel's motions were not in writing, and that he was denied his right to a speedy trial as a result. He also argues that posttrial counsel and appellate counsel rendered ineffective

assistance by failing to raise this argument in his posttrial motion and on direct appeal, respectively.

¶ 8 *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). 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.* A circuit court may *sua sponte* dismiss a petition for a writ of *habeas corpus* which is insufficient on its face. *People v. Raczkowski*, 359 Ill. App. 3d 494, 497 (2005) (citing *Hennings v. Chandler*, 229 Ill. 2d 18, 30 (2008)). We apply *de novo* review to the *sua sponte* dismissal of an application for *habeas corpus*. *Hennings*, 229 Ill. 2d at 31-32.

¶ 9 The plaintiff did not dispute the circuit court's jurisdiction in his petition for a writ of *habeas corpus*, nor does he challenge it on appeal. Instead, he relies on section 10-124(2) of the Code of Civil Procedure, which states:

"Causes for discharge when in custody on process of court. If it appears that the prisoner is in custody by virtue of process from any court legally constituted, he or she may be discharged only for one or more of the following causes:

2. Where, though the original imprisonment was lawful, nevertheless, by some act, omission or event which has subsequently taken place, the party has become entitled to be discharged." 735 ILCS 5/10-124(2) (West 2012).

¶ 10 The plaintiff's claim that he was denied his right to a speedy trial because defense counsel's various motions for continuances were not in writing alleged a nonjurisdictional error which occurred prior to his conviction. Even if this allegation were meritorious, it would not constitute a postconviction occurrence entitling him to immediate release from custody. Likewise, even if posttrial and appellate counsel rendered ineffective assistance for failing to raise this claim in a posttrial motion or on direct appeal, this would not entitle him to *habeas* relief because it does not render his conviction void or otherwise entitle him to immediate release. Consequently, the circuit court's *sua sponte* dismissal of his petition for a writ of *habeas corpus* was appropriate.

¶ 11 The plaintiff also reiterates his claim that he was denied his right to a speedy trial because he repudiated defense counsel's requests for continuances. This argument was previously rejected by this court (*People v. Hill*, 2011 IL App (5th) 090085-U) and is therefore barred by *res judicata*.

¶ 12 CONCLUSION

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

¶ 14 Affirmed.