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2016 IL App (3d) 130621-U

Order filed April 25, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

ANDRE JONES,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois
)	
v.)	Appeal No. 3-13-0621
)	Circuit No. 13-MR-305
)	
WARDEN MICHAEL LEMKE,)	Honorable
Defendant-Appellee.)	Roger Rickmon,
)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err when it dismissed plaintiff's *habeas corpus* petition.

¶ 2 Following a jury trial in 1993, Plaintiff, Andre Jones, was found guilty of two counts of first degree murder in the deaths of his wife's two children, Luther McGee and Jessica Wilkins. Plaintiff was sentenced to life in prison without the possibility of parole. On direct appeal, the First District Appellate Court affirmed the Jones's convictions and sentence. *People v. Jones*, No. 1-93-0999 (1995) (unpublished order under Supreme Court Rule 23).

¶ 3

BACKGROUND

¶ 4

On February 4, 2013, Jones filed a *pro se* state *habeas corpus* complaint naming Warden Michael Lemke, Director of Corrections (the Director), as defendant. On May 1, 2013, the Director filed a motion to dismiss Jones’s complaint pursuant to sections 2-615 and 2-619(a)(4) of the Code of Civil Procedure, arguing that Jones had not properly challenged the jurisdiction of the trial court, nor had he raised a proper postconviction event that would entitle him to immediate release from custody. 735 ILCS 5/2-615 (West 2012), 735 ILCS 5/2-619(a)(4) (West 2012).

¶ 5

On July 12, 2013, the circuit court of Will County granted the Director’s motion to dismiss on both section 2-615 and section 2-619(a)(4) grounds. On August 14, 2013, Jones filed a motion to vacate judgment and grant an evidentiary hearing/motion for reconsideration. On August 21, 2013, Jones filed this appeal.

¶ 6

On appeal, Jones requests this court reverse the trial court’s dismissal of his *habeas corpus* complaint.

¶ 7

ANALYSIS

¶ 8

In this appeal, Jones raises a convoluted myriad of issues in support of his contention that the trial court’s dismissal under sections 2-615 and 2-619(a)(4) of the Code of Civil Procedure was improper. Our standard of review of a motion to dismiss under sections 2-615 and 2-619 of the Code is *de novo*. *Stahelin v. Forest Preserve District of Du Page County*, 376 Ill. App. 3d 765, 771 (2007).

¶ 9

A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based upon defects apparent in the complaint. *Beachum v. Walker*, 231 Ill. 2d 51, 57 (2008). To avert dismissal under section 2-615, a plaintiff “must allege facts sufficient to bring a claim within a

legally recognized cause of action.” *Id.* at 58. We construe the allegations in the complaint in the light most favorable to the plaintiff. *Id.* at 58.

¶ 10 The *habeas corpus* relief requested by Jones is only available to prisoners incarcerated by a court that lacked subject matter or personal jurisdiction, or where the prisoner is entitled to immediate release due to some postconviction event. *Freeman v. Cowan*, 331 Ill. App. 3d 218, 219 (2002). “A complaint for a writ of *habeas corpus* may not be used to review proceedings that do not exhibit one of these defects, even though the alleged error involves a denial of constitutional rights.” *Id.*

¶ 11 In his 59-page complaint, Jones alleges an unlawful process by the court resulting in his murder convictions. In short, Jones insists he is illegally restrained of his liberty without due process of law. Throughout his complaint, Jones repeatedly argues that the trial court’s usage of a non-IPI jury instruction caused the court to exceed its statutory and constitutional authority, robbing the trial court of subject matter jurisdiction over his case, and therefore rendering his sentence void.

¶ 12 Subject matter jurisdiction over criminal cases is conferred upon Illinois trial courts by article VI, section 9 of the Illinois Constitution. *In re Luis R.*, 239 Ill. 2d 295, 301 (2010). A criminal defendant further confers personal jurisdiction upon the trial court when he appears personally before it. *People v. Speed*, 318 Ill. App. 3d 910, 915 (2001). The petitioner concedes in his complaint that “a court may not lose jurisdiction because it makes a mistake in determining either the facts, the law or both.” *People v. Davis*, 156 Ill. 2d 149, 156 (1993). Whether a circuit court complies with statutory sentence requirements is immaterial to a question of that court’s jurisdiction. *People v. Castleberry*, 2015 IL 116916, ¶ 19. Even if the trial court did err during

trial or sentencing, which we do not believe to be the case, Jones's jurisdictional argument lacks legal merit.

¶ 13 Jones further alleges that a postconviction event occurred when the Illinois Supreme Court issued its ruling in *People v. Pollock*, 202 Ill. 2d 189 (2002), entitling him to immediate release because the jury should not have convicted him under the *Pollock* interpretation of accountability. Therefore, Jones contends, one of his convictions was improper, rendering his resulting sentence invalid, and entitling him to immediate release from custody.

¶ 14 The case at hand is quite similar to the *Freeman v. Cowan* case in which the petitioner claimed that his consecutive sentences were unconstitutional or were otherwise imposed in error. *Freeman v. Cowan*, 331 Ill. App. 3d 218, 220 (2002). The court in that case reasoned that the petitioner's claims were simply not cognizable under *habeas corpus* because errors in a sentence are not considered postconviction events. *Id.*

¶ 15 Further, Illinois courts provide that court decisions subsequent to the adjudication of petitioner's case are not considered postconviction events that entitle the petitioner to discharge through *habeas corpus*. *People ex rel. Swiderski v. Brierton*, 65 Ill. App. 3d 153, 154 (1978). Examples of subsequent events that might entitle a prisoner to *habeas corpus* relief include serving more than a maximum imposed sentence or transfer from one prison to another without a hearing. *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125 (2006). Where Jones fails to allege a postconviction event, the trial court lacks the power to grant *habeas corpus* relief.

¶ 16 Reviewing Jones's *pro se* claims of error in the light most favorable to him, we conclude his claims are not of the proper subject matter for *habeas corpus* review. Jones argues the circuit court erred in dismissing his complaint, we disagree. Jones failed to raise any actionable legal issue regarding the trial court's lack of subject matter jurisdiction, or some postconviction event,

thus the trial court's dismissal on section 2-615 grounds was proper. We do not reach the issue of the trial court's dismissal of plaintiff's petition on section 2-619(a)(2) grounds because of our ruling that the court's dismissal upon section 2-615 grounds was proper.

¶ 17

CONCLUSION

¶ 18

For the reasons stated, the judgment of the circuit court dismissing the petition for a writ of *habeas corpus* is affirmed.

¶ 19

Affirmed.