2016 IL App (3d) 140628-U

Order filed November 29, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

LESTER B. MASON,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Petitioner-Appellant,	)	Peoria County, Illinois,
	)	
v.	)	Appeal No. 3-14-0628
	)	Circuit No. 82-CF-1458
	)	
GUY PIERCE, Warden,	)	Honorable
	)	David A. Brown,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in *sua sponte* dismissing the petitioner's *habeas corpus* petition.

¶ 2 The petitioner, Lester B. Mason, appeals from the trial court's *sua sponte* dismissal of his *habeas corpus* petition.

¶ 3 FACTS

¶ 4 In 1982, a jury found the petitioner guilty of armed robbery (Ill. Rev. Stat. 1981, ch. 38, ¶ 18-2(a)) and armed violence (Ill. Rev. Stat. 1981, ch. 38, ¶ 33A-2). The State subsequently filed notice of its intent to pursue sentencing under the Habitual Criminal Act (Act) (Ill. Rev. Stat. 1981, ch. 38, ¶ 33B-2), based upon the petitioner's two prior armed robbery convictions. The trial court sentenced the petitioner to a term of natural life imprisonment. The court entered the sentence only as to the armed robbery conviction, writing on the sentencing order: "the court defers entering judgement as to the count of armed violence."

¶ 5 On direct appeal, this court affirmed the petitioner's conviction and sentence. *People v. Mason*, 119 Ill. App. 3d 516 (1983). In affirming, this court held that prior convictions must be proven beyond a reasonable doubt under the Act. *Id*. at 522. We found that the State had met that burden through the testimony of the probation officer who compiled the presentence investigation report, who testified that the petitioner had admitted, in writing, to the two previous armed robbery convictions. *Id*. In the 30 years that followed, the petitioner filed a number of unsuccessful postconviction motions and appeals, none of which are relevant to the present matter.

¶ 6 On May 1, 2014, the petitioner filed a *pro se* petition for *habeas corpus*. In the petition, the petitioner argued first that the trial court "exceeded its jurisdiction" in referencing the armed violence count in the sentencing order. The petitioner also argued that his adjudication as a habitual criminal was void because the State failed to sufficiently prove the fact of his prior convictions. Because the State failed to prove him eligible for habitual criminal sentencing, the petitioner argued that he should have received a maximum sentence of 60 years' imprisonment—the maximum extended term for the Class X felony of armed robbery. Accordingly, he

maintained that he should be released from prison immediately, as he had already served over 50% of such a sentence.[1]

¶ 7 On July 15, 2014, the trial court dismissed the petitioner's *habeas corpus* petition. In doing so, the court pointed out that the petitioner only raised contentions of errors made at the trial level, and that such claims are not properly brought in a *habeas corpus* petition.

¶ 8 ANALYSIS

¶ 9 The Code of Civil Procedure enumerates the circumstances under which *habeas corpus* relief may be granted. 735 ILCS 5/10-124 (West 2014). Summarizing those circumstances, our supreme court has stated:

> "It is well established that an order of *habeas corpus* is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court that 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 that entitles him to release. [Citations.] A complaint for order 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." *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008).

[1] In both his *habeas corpus* petition and this appeal, the petitioner also argues that this court erred in his direct appeal when it held that prior convictions must be proven beyond a reasonable doubt under the Act. He cites to *People v. Robinson*, 167 Ill. 2d 53, 71 (1995), in which our supreme court held that such convictions need only be proven by a preponderance of the evidence. Because this court held the State to a *higher* standard of proof, to the benefit of the petitioner, this argument warrants no consideration.

Where a *habeas corpus* petition is insufficient on its face to warrant any relief under the *habeas corpus* statute, the trial court may *sua sponte* dismiss the petition. *Hennings v. Chandler*, 229 Ill. 2d 18, 30-31 (2008). We review such a dismissal *de novo*. *Id*. at 24.

¶ 10 The petitioner's argument that the State failed to properly prove the fact of his prior convictions does not present a jurisdictional ground for relief, nor does it allege any occurrence subsequent to his conviction that would entitle him to relief. The petitioner's argument is merely one relating to the sufficiency of the evidence; moreover, it was an issue already resolved on its merits by this court in 1983. See *Mason*, 119 Ill. App. 3d at 522. Even if the petitioner's argument was construed to be a claim that he was illegally sentenced outside of the Class X range, such an argument *still* would not present a jurisdictional dimension. See *People v. Castleberry*, 2015 IL 116916, ¶¶ 15-19 (jurisdictional authority is not dependent on sentencing statutes).

¶ 11 The petitioner's other argument in his petition—that the trial court "exceeded its jurisdiction" in referencing the armed violence conviction in the sentencing order—likewise does not warrant relief under the *habeas corpus* statute. In that sentencing order, the trial court was explicit that it was *not* sentencing the petitioner on the armed violence conviction. The petitioner has made no effort, either at the trial level or on appeal, to show how the mere mention of that charge was beyond the trial court's jurisdiction.

¶ 12 Though the petitioner raised the above two arguments in his *habeas corpus* petition, he has not addressed either in his *pro se* appellate briefs. However, the petitioner has raised an additional argument on appeal, namely, that "under current law the sentencing factors of the [Act] has been repealed. P.A. 95-1052." Of course, this argument is waived because it was not raised in the trial court. *E.g.*, *Schaller v. Weier*, 319 Ill. App. 3d 172, 176 (2001). Moreover, we

would note that the Unified Code of Corrections (Code) continues to provide that defendants who are convicted of a third separate Class X felony are to be adjudged habitual criminals and sentenced to natural life imprisonment. 730 ILCS 5/5-4.5-95(a) (West 2014). Public Act 95-1052 (eff. July 1, 2009) merely incorporates that law into the "General Recidivism Provisions" of the Code.

¶ 13 In summary, each of the arguments in the petitioner's *habeas corpus* petition and each of the arguments made on this appeal are completely without merit. For this reason, the State has moved for sanctions under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994), which affords this court the discretion to impose sanctions where a frivolous appeal has been filed. That rule provides: "An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." *Id*.

¶ 14 In response to the State's request for sanctions, the petitioner responds: "Plaintiff believes the court recognizes he is indigent and to place any fines governing alleged sanctions for pleadings under fundamental due process would be frivolous, where cause is not equal." The petitioner's argument apparently relies on the implicit premise that the rule barring frivolous appeals does not apply to the indigent. This is not the case. See, *e.g.*, *People v. Austin*, 2014 IL App (4th) 140408, ¶¶ 26-27 (initiating sanctions proceedings against *pro se* prisoner).

¶ 15 The petitioner's *habeas corpus* petition was not grounded in fact, nor was it warranted by existing law. Though we may not sanction the petitioner for filing that petition, we may sanction him for appealing its dismissal, and making *further* frivolous arguments at this level. Because the State moved for sanctions in its brief, and the petitioner has thus had an opportunity to respond, we need not issue a show cause order. See Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994) ("*If the*

reviewing court initiates the sanction, it shall require the party or attorney, or both, to show cause why such a sanction should not be imposed before imposing the sanction." (Emphasis added.)). We therefore impose sanctions upon the petitioner in the sum of $50, to be paid to the appellate court clerk, for deposit in the State of Illinois general revenue fund. Further, we remind the trial court of its statutory authority to collect funds from his Department of Corrections trust fund account in order to pay for the costs of this litigation. See *Austin,* 2014 IL App (4th) 140408, ¶ 25 (" 'If a prisoner confined in an Illinois Department of Corrections facility files a pleading *** and the Court makes a specific finding that the pleading *** filed by the prisoner is frivolous, the prisoner is responsible for the full payment of filing fees and actual court costs.' " (quoting 735 ILCS 5/22-105(a) (West 2012))).

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Peoria County is affirmed and sanctions are imposed.

¶ 18 Affirmed.

¶ 19 Sanctions imposed.