

NOTICE
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2016 IL App (5th) 150333-U

NO. 5-15-0333

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).

MITCHELL PRZETACZNIK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Johnson County.
)	
v.)	No. 15-MR-31
)	
KURTIS HUNTER, Warden,)	Honorable
)	James R. Williamson,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court. Justices Welch and Moore concurred in the judgment.

ORDER

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

¶ 2 The plaintiff, Mitchell Przetacznik, is currently incarcerated at Shawnee Correctional Center in Johnson County, Illinois, where he is in the custody of the defendant, Kurtis Hunter, the warden of the facility. He appeals the dismissal of his *pro se* petition for a writ of *habeas corpus*. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 The plaintiff was convicted of felony violation of an order of protection (VOP) and sentenced to one year of imprisonment followed by a four-year term of mandatory supervised release (MSR) pursuant to section 5-8-1(d)(6) of the Unified Code of Corrections (730 ILCS 5/5-8-1(d)(6) (West 2014)). During his MSR, he was arrested for and charged with a domestic battery. On October 30, 2014, as a result of these charges, his MSR was revoked. No appeal of the revocation appears in the record. Based upon the revocation of his MSR, he was physically returned to the Department of Corrections to serve the remainder of his felony VOP sentence. On February 23, 2015, the domestic battery charge was nol-prossed by the State. On May 14, 2015, the plaintiff filed a *habeas corpus* petition alleging that, because the charge for which his MSR was revoked was nol-prossed, his MSR should be reinstated and that he was entitled to immediate release from prison. In response, the State filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)) arguing the plaintiff had failed to state a cause of action. The trial court granted the dismissal. The plaintiff timely appeals.

¶ 5

ANALYSIS

¶ 6 *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.*

¶ 7 "As a prisoner on mandatory supervised release, petitioner remains in the legal custody of the Department of Corrections for the duration of the release period. [Citations.] Therefore, while petitioner's challenge to the revocation proceedings might affect the manner in which he would serve his term of mandatory supervised release, it would not entitle him to actual release or discharge." *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430-31 (1998). "*Habeas corpus* does not lie if the person is in custody by virtue of a final judgment of any circuit court, or of any proceeding for the enforcement of such judgment, unless the time during which such party may be legally detained has expired." *Id.* at 431. "[T]he time during which [the plaintiff] can be legally detained does not expire until the term of mandatory supervised release expires; therefore, *habeas corpus* relief is not available to a [plaintiff] *** serving a term of mandatory supervised release." *Newsome v. Hughes*, 131 Ill. App. 3d 872, 875 (1985). "[W]here the original judgment of conviction is not void, a prisoner's maximum term has not yet expired, and nothing has occurred to warrant a prisoner's immediate discharge, the trial court is without jurisdiction to grant *habeas corpus* relief." *Faircloth*, 367 Ill. App. 3d at 125.

¶ 8 A circuit court may dismiss a petition for a writ of *habeas corpus* which is insufficient on its face. *Beacham v. Walker*, 231 Ill. 2d 51, 59 (2008). We apply *de novo* review to the dismissal of an application for *habeas corpus*. *Id.* at 57.

¶ 9 In this case, 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 alleges his MSR revocation was based upon a ruse by his roommate to steal over \$18,000 from him and that this constitutes the "post-conviction" event required by statute. Further, while not appealing the revocation, he discusses the requirements of a revocation hearing, citing *Morrissey v. Brewer*, 408 U.S. 471, 488-89 (1972). Lastly, the plaintiff does not allege the expiration of his sentence, only that he wishes to continue his MSR, by stating, "[p]revailing on the present claim would entitle appellant to immediate release where the relief he is seeking is reinstatement to his MSR."

¶ 10 Here, the plaintiff was on MSR from his conviction for his felony VOP and was still in the legal custody of the Department of Corrections per *Barney*. An alleged MSR violation occurred, a hearing was held, the plaintiff's MSR was revoked, and he was returned to and is now in the legal and physical custody of the Department of Corrections at Shawnee Correctional Center. The plaintiff's now-physical imprisonment is based upon his sentence for his conviction for the felony VOP, a sentence which has not expired. Because his reimprisonment is due to his previous conviction and current revocation of his MSR, and because his sentence has not expired, he is not entitled to immediate release. Further, as in *Barney*, while the plaintiff may disagree with how he is to serve the remainder of his term, his sentence has not expired, and therefore, the requested *habeas corpus* release is not a remedy available to the plaintiff. *Barney*, 184 Ill. 2d at 430-31.

¶ 11 Lastly, the plaintiff requests reinstatement of his MSR as his relief sought by his *habeas corpus* petition. The sole remedy to a *habeas corpus* petition is release from custody. *Faircloth*, 367 Ill. App. 3d at 125. Therefore, reinstatement of the plaintiff's MSR is not an available remedy to the plaintiff via *habeas corpus*.

¶ 12 CONCLUSION

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

¶ 14 Affirmed.