

2018 IL App (4th) 170600-U

NO. 4-17-0600

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 16, 2018

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

**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).

TOOLA O. TAYLOR,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Brown County
CAMERON WATSON, CAO/WARDEN, WESTERN	)	No. 17MR19
ILLINOIS CORRECTIONAL CENTER,	)	
Defendant-Appellee.	)	Honorable
	)	Jerry J. Hooker,
	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court. Justices Steigmann and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court dismissed plaintiff’s appeal because the circuit court had not entered a final and appealable order, and thus, the appellate court lacked jurisdiction.

¶ 2 In May 2016, plaintiff, Toola O. Taylor, an inmate in the Western Illinois Correctional Center (Western), *pro se* filed a petition for *habeas corpus* relief against defendant, Cameron Watson, the warden of Western. In June 2017, defendant filed a motion to dismiss. In August 2017, the circuit court granted defendant’s motion, dismissing plaintiff’s petition without prejudice.

¶ 3 On appeal, plaintiff asserts that the circuit court erred when it dismissed his petition. Because we conclude we have no jurisdiction to address plaintiff’s claim, we dismiss the appeal.

¶ 4 I. BACKGROUND

¶ 5 In July 2006, plaintiff was charged by a three-count indictment with aggravated criminal sexual assault while armed with a firearm (count I) (720 ILCS 5/12-14(a)(8) (West 2006)), aggravated criminal sexual assault (count II) (720 ILCS 5/12-14(a)(1) (West 2006)), and criminal sexual assault (count III) (720 ILCS 5/12-13(a)(1) (West 2006)). A Peoria County jury found plaintiff guilty of counts II and III. In June 2008, the circuit court of Peoria County sentenced plaintiff to an extended term of 32 years' imprisonment on count II alone. On direct appeal, the appellate court affirmed plaintiff's convictions and sentence. *People v. Taylor*, 397 Ill. App. 3d 813, 819 (2010).

¶ 6 In March 2011, plaintiff filed a *pro se* petition for relief from judgment (735 ILCS 5/2-1401 (West 2010)), arguing his sentence was void. The circuit court denied plaintiff's petition, and the appellate court affirmed. *People v. Taylor*, 2015 IL App (3d) 140252-U.

¶ 7 On May 30, 2016, plaintiff filed a *pro se* petition for *habeas corpus* relief in the circuit court of Brown County pursuant to Article X of the Code of Civil Procedure (Code) (735 ILCS 5/10-101 *et seq.* (West 2016)). Plaintiff alleged he was being held unlawfully because the section of the aggravated criminal sexual assault statute under which he was convicted and sentenced was "disproportionate, unconstitutional, and thereby unenforceable." Defendant filed a motion to dismiss pursuant to section 2-619(a)(3) of the Code (735 ILCS 5/2-619(a)(3) (West 2016)), arguing the *habeas corpus* petition was duplicative where plaintiff was also challenging his conviction in the Peoria County circuit court.

¶ 8 On August 10, 2017, the circuit court in this case granted defendant's motion, dismissing plaintiff's *habeas corpus* petition without prejudice. The court found that plaintiff had a postconviction petition pending in Peoria County that was duplicative of his *habeas corpus* petition.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Plaintiff asserts the circuit court erred in dismissing his *habeas corpus* petition. Defendant argues this court lacks jurisdiction to consider this appeal because the circuit court's dismissal of plaintiff's petition was without prejudice and thus not a final and appealable order. We agree with defendant.

¶ 12 This court's jurisdiction derives from the Illinois Constitution and the rules prescribed by our supreme court. "Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court \*\*\*. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts." Ill. Const. 1970, art. VI, § 6. Thus, absent an exception provided by our supreme court, this court "is without jurisdiction to review judgments, orders or decrees which are not final." *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). A final order is one that "ascertains and fixes absolutely and finally the rights of the parties in the lawsuit." *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982). As a general rule, "the dismissal of a complaint without prejudice is not final and appealable." *People v. Vari*, 2016 IL App (3d) 140278, ¶ 10.

¶ 13 In this case, the circuit court expressly stated it dismissed plaintiff's *habeas corpus* petition without prejudice. In no way did the court fix "absolutely and finally the rights of the parties in the lawsuit." *Flores*, 91 Ill. 2d at 112. Because the circuit court dismissed plaintiff's petition without prejudice, no final and appealable order exists, and this court is without jurisdiction to consider the merits of plaintiff's appeal.

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, we dismiss the appeal.

¶ 16

Appeal dismissed.