

2014 IL App (2d) 130933-U
No. 2-13-0933
Order filed October 27, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|------------------------------------|---|-------------------------------|
| JEREMY L. SCHLOSS, |) | Appeal from the Circuit Court |
| |) | of Du Page County. |
| Plaintiff-Appellant, |) | |
| |) | |
| v. |) | No. 05-CF-367 |
| |) | |
| GREGORY SCOTT, Director, Rushville |) | |
| Treatment and Detention Facility, |) | Honorable |
| |) | Daniel P. Guerin, |
| Defendant-Appellee. |) | Judge, Presiding. |

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Burke and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in denying plaintiff's habeas corpus petition, because plaintiff did not allege claims for which habeas corpus relief could be granted. However, plaintiff could raise a voidness claim at any time, and we agreed with his argument that the tolling of his MSR while he was in civil confinement was void because the statutory subsection on which the tolling was based was not in effect when plaintiff committed the underlying crime. Therefore, we affirmed the trial court's denial of the habeas corpus petition but vacated the tolling of the MSR as void.

¶ 2 Plaintiff, Jeremy L. Schloss, appeals the trial court's denial of his *habeas corpus* petition. In his *pro se* appeal, plaintiff argues that: (1) he was not timely given *Miranda* warnings, thereby violating his due process rights; (2) his plea of guilty to aggravated criminal sexual abuse

was invalid because he was not properly admonished of the penalties; (3) the requirement of lifetime sex offender registration in his case violates due process; and (4) subsection 15(e) of the Sexually Violent Persons Commitment Act (SVP Act) (725 ILCS 207/15(e) (West 2008)), which indefinitely tolls his mandatory supervised release (MSR), is operating as a retroactive amendment and renders his criminal conviction and sentence void and unenforceable. We affirm the trial court's denial of plaintiff's petition. However, we vacate as void the application of subsection 15(e) to toll plaintiff's MSR, as that subsection was enacted after plaintiff's underlying conviction, and case law holds that the tolling provision does not apply retroactively.

¶ 3

I. BACKGROUND

¶ 4 In March 2005, plaintiff pleaded guilty to the aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(2) (West 2004)) of his wife, C.S. In June 2005, he entered a negotiated plea and was sentenced to 180 days in jail and 36 months' sex offender treatment probation. He was ordered to have no direct or indirect contact with C.S. Later that year, the State petitioned to revoke plaintiff's probation, alleging that he had contacted C.S. Plaintiff admitted the allegations, and in November 2005, the trial court resentenced him to seven years' imprisonment followed by two years' MSR.

¶ 5 Respondent was scheduled to be released on MSR on July 3, 2008. The day before, on July 2, 2008, the State filed a petition requesting that respondent be adjudicated a sexually violent person (SVP) under the SVP Act. According to the State, the filing of the petition tolled plaintiff's MSR until (1) the petition was dismissed, (2) plaintiff was found not to be a SVP, or (3) plaintiff was discharged under the Act. See 725 ILCS 207/15(e) (West 2008).

¶ 6 On June 17, 2010, plaintiff filed a petition under the Post-Conviction Hearing Act (Post-Conviction Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). He alleged that he had an agreement

with the State that he would be sentenced to a maximum of seven years' imprisonment and two years' MSR, but the State violated his due process rights by unilaterally extending his MSR term through the SVP Act, under which his MSR term was indefinitely suspended. The trial court summarily dismissed the petition, and this court affirmed, reasoning that defendant was not challenging the proceedings which led to his conviction, as required by the Post-Conviction Act. *People v. Schloss*, No. 2-10-0393 (2011) (unpublished order under Supreme Court Rule 23).

¶ 7 On March 18, 2013, the jury found respondent to be a SVP, and following a dispositional hearing on May 28, 2013, plaintiff was committed to the care of the Illinois Department of Human Services (DHS).

¶ 8 On July 22, 2013, plaintiff filed the petition for habeas corpus that is the subject of the instant appeal. He argued that: (1) after his arrest, the police interrogated him before admonishing him under *Miranda*, thereby violating his due process rights; (2) when probation revocation proceedings took place, he was not admonished that he was entering an "open plea" or "blind plea" and was not provided with an opportunity to withdraw his original guilty plea; (3) the application of the Sex Offender Registration Act (750 ILCS 150/1 *et seq.* (West 2004)) violated his right to due process because it classified aggravated criminal sexual abuse as a "predatory" crime (see 730 ILCS 150/2 (West 2004)), even though there was no specific finding that he had committed a "predatory" offense; and (4) the retroactive amendment to the SVP Act that indefinitely tolled his MSR implicated a due process and liberty interest, as it had the effect of continued incarceration beyond his criminal sentence.

¶ 9 The trial court denied the petition on August 13, 2013, finding no ground for habeas corpus relief. Plaintiff timely appealed.

¶ 10

II. ANALYSIS

¶ 11 Plaintiff, *pro se*, challenges the trial court's denial of his habeas corpus petition. Section 10-124 of the Code of Civil Procedure (Code) (735 ILCS 5/10-124 (West 2012)) specifies the seven grounds on which an individual may obtain habeas corpus relief. *People v. Rios*, 2013 IL App (1st) 121072, ¶ 10. These grounds consist of two general categories. *Id.* A prisoner may obtain release under habeas corpus only if (1) the court lacked personal or subject matter jurisdiction, or (2) there has been an occurrence subsequent to the prisoner's conviction entitling him to release. *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008). A prisoner may not use a habeas corpus petition to review proceedings without one of these defects, even if the alleged error involves a denial of constitutional rights. *Id.* The trial court has the authority to *sua sponte* deny a habeas corpus petition where the complaint and any attached documents show that the plaintiff cannot possibly win habeas corpus relief. *Hennings v. Chandler*, 229 Ill. 2d 18, 32 (2008). We review *de novo* the trial court's denial of a petition for habeas corpus. See *id.* at 24; see also *Adcock v. Snyder*, 345 Ill. App. 3d 1095, 1098 (2004) (the legal sufficiency of a habeas corpus complaint is an issue of law that we review *de novo*). Further, we may affirm the trial court's decision to deny a habeas corpus petition on any basis supported by the record, regardless of whether the trial court relied on those grounds or whether its reasoning was correct. *Beacham*, 231 Ill. 2d at 61.

¶ 12 Plaintiff first argues that the original indictments of aggravated criminal sexual abuse and unlawful restraint violated his due process and fifth amendment rights because they were based upon a coerced confession, without proper *Miranda* warnings. The State maintains that this issue is not cognizable in habeas corpus because it is not a challenge to the trial court's jurisdiction and does not constitute an occurrence subsequent to plaintiff's conviction entitling him to immediate release from custody. Plaintiff responds that this falls under section 10-124(6)

of the Code, which states that a prisoner may be discharged “[w]here the process appears to have been obtained by false pretense or bribery.” 735 ILCS 5/10-124(6) (West 2012). Plaintiff argues that the failure to administer *Miranda* warnings and the extraction of a confession by psychological coercion constitutes bribery.

¶ 13 Plaintiff’s argument is without merit. Even putting aside the plain meaning of “bribery,” the ordinary legal meaning of “process” is any means the court uses to acquire or exercise its jurisdiction over a person or property. *State Farm Fire & Casualty Co. v. Miller Electric Co.*, 231 Ill. App. 3d 355, 358 (1992). In this manner, section 10-124(6) falls into the category of relief obtainable through habeas corpus due to the trial court lacking personal jurisdiction. See *Beacham*, 231 Ill. 2d at 58. A defendant consents to the trial court’s personal jurisdiction over him through his appearance, or personal jurisdiction may be imposed upon him by effective service of summons. *People v. Ocon*, 2014 IL App (1st) 120912, ¶ 32. As such, even a violation of plaintiff’s *Miranda* rights would not impair the trial court’s personal jurisdiction over him, and therefore he may not obtain relief for such a violation through a habeas corpus petition.

¶ 14 Plaintiff further argues in his reply brief: “With the seriousness of this constitutional violation, any plea of guilty, contemplated, induced or otherwise entered is not valid and is void.” A void judgment may be attacked at any time, directly or collaterally. *People v. Warren*, 2014 IL App (4th) 120721, ¶ 152. However, plaintiff does not develop his argument or cite any authority, thereby forfeiting it for review. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (arguments lacking citation to authority are forfeited); *People v. Olsson*, 2014 IL App (2d) 131217, ¶ 16 (a reviewing court is not a repository into which an appellant may dump the burden of argument and research; the failure to clearly define issues and support them with authority results in forfeiture of the argument). Even otherwise, a judgment is void only if the court that entered it

lacked jurisdiction (*Rios*, 2013 IL App (1st) 121072, ¶ 15), and plaintiff has shown no jurisdictional defects relating to his *Miranda* argument.

¶ 15 Plaintiff next argues that he stated a cognizable claim that the trial court failed to admonish him as to the penalties and direct consequences of a conviction of aggravated criminal sexual abuse, including a lifetime of sex offender registration, and that he should have been given the opportunity to withdraw his guilty plea. The State again argues that this claim does not raise any jurisdictional defects or constitute a postconviction event requiring immediate release, as required for habeas corpus relief. Plaintiff counters with a cite to *Mabry v. Johnson*, 467 U.S. 504, 509 (1984) (overruled in part by *Puckett v. United States*, 556 U.S. 129 (2009)), but *Mabry* refers to a federal habeas corpus petition, unlike the one filed here.

¶ 16 Plaintiff additionally argues that the failure to admonish at the probation revocation hearing was a postconviction event because he had previously pleaded guilty and received probation. However, it is not enough for the issue to be a postconviction event, but it must be a postconviction event entitling the prisoner to release. *Beacham*, 231 Ill. 2d at 58; *Adcock*, 345 Ill. App. 3d at 1098 (the sole remedy under habeas corpus is a prisoner's immediate discharge from custody). Here, a finding that the trial court failed to properly admonish plaintiff would have, at most, resulted in a new proceeding at which he would receive the proper admonishments and be allowed to withdraw his guilty plea. See, e.g., *People v. Wigod*, 406 Ill. App. 3d 66, 77 (2010). Such a finding would not have resulted in his immediate release from prison, even if he were still in prison. Plaintiff is currently committed to a DHS facility based on a finding that he is a SVP, which took place in a proceeding distinct from that of his criminal conviction, and the failure to admonish in his criminal case would not entitle him to immediate release from DHS care, either.

¶ 17 Plaintiff cites *People v. Williams*, 188 Ill. 2d 365, 371 (1999), where our supreme court stated, “If a defendant’s guilty plea is not voluntary and knowing, it has been obtained in violation of due process and, therefore, is void.” However, we have characterized this language as *obiter dictum* on the issue of voidness and therefore not binding. *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 27. We reiterated in *Hubbard* that a judgment is void under Illinois law only when the court entering the judgment lacked jurisdiction. *Id.* ¶ 1. Further, as discussed, a void criminal conviction would not result in immediate release from DHS custody, so this issue is not appropriate for habeas corpus relief.

¶ 18 Plaintiff’s third argument on appeal is that lifetime registration as a sexual predator violates his due process rights and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because neither the indictment nor the aggravated criminal sexual abuse statute contain the element of a predatory act. Plaintiff’s third argument fails for the same reasons as the first two, in that he does not challenge the trial court’s jurisdiction or raise a postconviction event that would entitle him to immediate release. See also *People v. Rajagopal*, 381 Ill. App. 3d 326, 331 (2008) (collateral consequences of a conviction are insufficient to characterize an individual as in custody for habeas corpus purposes); *People v. Carroll*, 351 Ill. App. 3d 972, 975 (2004) (alleged *Apprendi* violation was not jurisdictional in nature and habeas corpus was not appropriate avenue for relief); *Freeman v. Cowan*, 331 Ill. App. 3d 218, 220 (2002) (claim that sentence is unconstitutional or otherwise imposed in error is not cognizable in habeas corpus).

¶ 19 Plaintiff’s last argument on appeal is that the “retroactive amendment” to subsection 15(e) of the SVP Act that indefinitely tolls his MSR until he is released from DHS care voids “the judgment of the criminal court” and renders his sentence unenforceable. Plaintiff argues that in his case, subsection 15(e) “retroactively tolls a sentence Ordered [*sic*] by the criminal

court before the enactment of Section 15(e), until discharge from the SVP Act.” Plaintiff maintains that the indefinite suspension of the MSR deprives him of due process and his liberty interest.

¶ 20 The State argues that plaintiff’s final claim is that “the SVP Act impermissibly extended his criminal sentence by tolling his MSR until he is released from civil commitment” (which is how plaintiff framed this issue in the habeas corpus petition), but that this claim does not constitute a postconviction event entitling him to immediate release. The State notes that habeas corpus relief is not available to a person in custody until the time in which he may be legally detained has expired (*Taylor v. Cowan*, 339 Ill. App. 3d 406, 409-10 (2003)), and it argues that plaintiff may still be legally detained because his MSR term was tolled indefinitely under subsection 15(e), as reflected on the Illinois Department of Corrections (IDOC) website (see *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739-40 (2003) (taking judicial notice of information on IDOC website). The State also argues that plaintiff is not entitled to relief because only a judicial finding that he is no longer a SVP would entitle him to immediate release from DHS care.

¶ 21 We agree with the State that plaintiff is not entitled to habeas corpus relief because the criminal court’s jurisdiction to enter the underlying conviction and sentence was not affected by the subsequent civil proceedings under the SVP Act. Moreover, plaintiff does not allege an event occurring after his conviction that would entitle him to immediate release from DHS.

¶ 22 However, the State does not directly address plaintiff’s voidness challenges. As stated, a void judgment may be attacked at any time. *Warren*, 2014 IL App (4th) 120721, ¶ 152. Plaintiff’s challenge to the underlying criminal conviction as void fails for similar reasons as his habeas corpus argument fails, in that the criminal court had subject matter and personal

jurisdiction to enter that judgment, which the later SVP proceedings did not affect. See *Rios*, 2013 IL App (1st) 121072, ¶ 15 (a judgment is void only if the court that entered it lacked jurisdiction).

¶ 23 Still, plaintiff also challenges the application of subsection 15(e) to his sentence, which results in his MSR term being suspended indefinitely, until he is released from DHS. See 725 ILCS 207/15(e) (West 2008). Plaintiff labels this a “retroactive” application, as the underlying crime occurred in 2005 and his conviction was also entered that year, but subsection 15(e) became effective in 2007. See Pub. Act. 94-992 (eff. Jan. 1, 2007) (adding subsection (e)). Plaintiff was found to be a SVP in 2008.

¶ 24 Central to our analysis of this issue is *People v. Bethel*, 2012 IL App (5th) 100330. There, the defendant’s first crime occurred in 1989; the defendant pleaded guilty to aggravated criminal sexual assault for that crime in 1990; the defendant was charged with a separate incident of aggravated criminal sexual assault in 1991; and the defendant entered a negotiated guilty plea that same year. *Id.* ¶ 3. In September 2009, days before the defendant was scheduled to be released from prison and begin serving his MSR term, the State filed a petition under the SVP Act. *Id.* ¶ 4. While the petition was pending, the defendant filed a postconviction petition seeking to vacate his guilty pleas. He alleged that subsection 15(e) could impermissibly increase his sentence, and that had he known that the legislature was going to enact the tolling provision, he would not have entered the guilty pleas. *Id.*

¶ 25 The appellate court analyzed whether subsection 15(e) applied retroactively. The court stated that subsection 15(e) did not expressly indicate that it applied retroactively, and that there was no legislative directive as to the temporal reach of the provision. *Id.* ¶ 15. The court further stated that application of subsection 15(e) would have a definite, immediate, and substantive

effect on the length of the defendant's MSR term, as the defendant would remain on MSR, subject to its conditions and potential revocation proceedings, while he was in DHS care, and he would later have to serve the MSR term upon discharge from SVP treatment. *Id.* ¶ 18. The court stated: "Where subsection 15(e) contains no express provision regarding its temporal reach and where subsection 15(e) concerns substantive rather than procedural matters, we will presume that the tolling provision does not apply retroactively to the defendant's pleas and sentences ***." *Id.*; see also *People v. Steward*, 406 Ill. App. 3d 82, 94 (2010) (subsection 15(e) does not apply retroactively).

¶ 26 Here, as in *Bethel*, plaintiff's underlying crime took place before subsection 15(e) became effective, so subsection 15(e) should not apply to his pleas and sentences. The *ex post facto* clauses of the Illinois and United States constitutions prohibit the retroactive application of laws that provide for greater punishment than did the laws in effect at the time a crime was committed. *People v. Fredericks*, 2014 IL App (1st) 122122, ¶ 54. To allow subsection 15(e) to apply to plaintiff's MSR would be a violation of *ex post facto* principles because at the time plaintiff committed the underlying crime, the MSR would have been served concurrently with any subsequent civil confinement under the SVP Act. Accordingly, the tolling of plaintiff's MSR under section 15(e), as reflected in the IDOC website and the State's statements in its brief, is vacated as void. See *People v. Brown*, 225 Ill. 2d 188, 203 (2007) ("A sentence which exceeds statutory maximums or violates the constitution is void from its inception and subject to challenge at any time"); *People v. Cortez*, 2012 IL App (1st) 102184, ¶ 16 (a sentence not authorized by statute is void).¹ Contrary to plaintiff's argument, the improper tolling is not a

¹ We recognize that we stated earlier that a judgment is void only if the trial court lacked jurisdiction to enter it. *Supra* ¶ 14. In *People v. Davis*, 156 Ill. 2d 149 (1993), our supreme court

basis on which to vacate his entire sentence, as a sentence not authorized by statute is void only to the extent that it exceeds what the law permits. *Brown*, 225 Ill. 2d at 205. Accordingly, we vacate only the application of section 15(e) to toll defendant's MSR, and we do not vacate the underlying sentence of imprisonment or the MSR itself.

¶ 27

III. CONCLUSION

¶ 28 For the reasons stated, we affirm the judgment of the Du Page County circuit court denying plaintiff's habeas corpus petition. However, we vacate the tolling of defendant's MSR as void.

¶ 29 Affirmed; tolling of MSR vacated.

stated that there are three "element[s]" of jurisdiction: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) "the power to render the particular judgment or sentence." Here, the third element applies. See also *In re Alex T.*, 375 Ill. App. 3d 758, 763 (2007) (when an order "significantly restrict[s] a person's liberty, statutory authorization must exist for a court to have jurisdiction to enter it.").