2018 IL App (2d) 170704-U
No. 2-17-0704
Order filed July 9, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SHAWN M. BAHRS,	)	Appeal from the Circuit Court
	)	Du Page County, Illinois
Plaintiff-Appellant,	)	
	)	
v.	)	No. 17-MR-199
	)	
GEORGE J. BAKALIS,	)	Honorable
	)	Paul Fullerton,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in dismissing the plaintiff's request for a writ of *mandamus*.

¶ 2 I. BACKGROUND

¶ 3 In 2000, the plaintiff, Shawn M. Bahrs, was convicted of aggravated driving under the influence of alcohol (aggravated DUI), a Class 3 felony, in violation of 625 ILCS 5/11-501(a)(2), (d)(1)(A), (c-1)(2) (West 1998). This conviction was based upon two of Bahrs' prior DUI convictions, one in 1986, and one in 1990. Judge George J. Bakalis sentenced Bahrs to three years' imprisonment.

¶ 4 In 2014, Bahrs successfully moved to have the 1986 DUI conviction vacated. In 2016, his 1990 DUI conviction was likewise vacated.

¶ 5 On February 9, 2017, Bahrs filed a complaint for *mandamus* against Judge Bakalis in the circuit court of Du Page County, requesting an order requiring Judge Bakalis to vacate Bahrs' aggravated DUI conviction. In his complaint for *mandamus*, Bahrs claimed that, because the underlying convictions had been vacated, his 2000 aggravated DUI conviction no longer met the statutory guidelines for aggravated DUI and was voidable and should be vacated. Bahrs challenged both his conviction and his sentence of aggravated DUI.

¶ 6 Bahrs has also challenged his aggravated DUI conviction through two other routes, filing a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2016)) and a postconviction petition under section 122-2 of the Code (735 ILCS 5/122-2 (West 2016)). The trial court dismissed both of those petitions. Bahrs has appealed both dismissals and those two appeals are currently pending in this court.

¶ 7 The trial court dismissed the complaint for *mandamus* pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)). Bahrs then filed this *pro se* appeal.

¶ 8 II. ANALYSIS

¶ 9 A motion to dismiss brought under section 2-615 of the Code attacks the sufficiency of the complaint, on the basis that, even assuming the allegations of the complaint to be true, the complaint does not state a cause of action that would entitle the plaintiff to relief. 735 ILCS 5/2-615 (West 2014); *Kanerva v. Weems*, 2014 IL 115811, ¶ 33. A claim should not be dismissed on the pleadings "unless it is clearly apparent that no set of facts can be proved which will entitle [the] plaintiff to recover." *Nielsen-Massey Vanillas, Inc., v. City of Waukegan*, 276 Ill. App. 3d

146, 151 (1995). We review the dismissal of a complaint pursuant to section 2-615 *de novo*. *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002).

¶ 10 *Mandamus* is an "extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public officer where no exercise of discretion on his part is involved." (Internal quotation marks omitted.) *People v. Castleberry*, 2015 IL 116916, ¶ 26. To state a claim for *mandamus* relief, the plaintiff must allege facts demonstrating a clear right to the requested relief, a clear duty on the part of the defendant to act, and a clear authority in the defendant to comply. *Cordrey v. Prisoner Review Board*, 2014 IL 117155, ¶ 18.

¶ 11 "A writ of *mandamus* cannot be used to review orders or judgments of courts for error, and it cannot be utilized to alter a judge's actions when that judge had jurisdiction to act." *In re Commitment of Phillips*, 367 Ill. App. 3d 1036, 1042 (2006). In other words, *mandamus* cannot be used as a substitute for the appeals process. In *Phillips*, a convicted sex offender requested a writ of *mandamus*, seeking relief from his commitment as a sexually violent person. The reviewing court held that he could not bring an action for *mandamus* because his complaint raised issues that could have been raised in an appeal. Because "[a]ll the arguments [in] his first motion could have been raised on direct appeal and, further, are *** seeking to compel the performance of a nondiscretionary duty," *mandamus* was not available. *Id.* The defendant then filed a second pleading challenging his conviction as a sexually violent person on different grounds, but the trial court dismissed this as well, concluding that it suffered from the same defects. *Id.*

¶ 12 Thus, *mandamus* cannot be used as a substitute for an appeal. Bahrs has appeals pending and has not exhausted his ability to directly attack his conviction.

¶ 13 There is an exception to the principle that *mandamus* cannot be used as a substitute for an appeal, and that is if the judgment is void. Void judgments are entered when the court has no authority to enter the judgment. If a judgment is void, then it may be challenged at any time. *Castleberry*, 2015 IL 116916, ¶ 11. Bahrs argues that his complaint falls within this exception because his conviction is void.

¶ 14 On appeal, Bahrs argues that, because the underlying convictions have been vacated, that his 2000 aggravated DUI conviction is void.[1] The State contends that it is merely voidable. The question of voidness is one of jurisdiction. Jurisdiction is made up of personal and subject matter jurisdiction. *Castleberry*, 2015 IL 116916, ¶ 11. Personal jurisdiction is the ability of the court to exert its power over an individual. The court can gain personal jurisdiction where a person voluntarily appears before the court, for example in a pretrial hearing. "Subject matter jurisdiction 'refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs' [citation], and this jurisdiction extends to all 'justiciable matters.' " *LVNV Funding LLC v. Trice*, 2015 IL 116129, ¶ 35 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002) (quoting Ill. Const. 1970, art. VI, § 9)). Justiciable matters include both civil cases and criminal cases, such as DUI.

[1] Bahrs raises this voidness argument for the first time on appeal—Bahrs' complaint actually asserted that his conviction was "voidable," not that it was void. Technically, he has forfeited any argument that his conviction is void. "It is axiomatic that points not raised in the trial court are deemed waived and may not be presented for the first time on appeal." *In re Marriage of Slavenas*, 139 Ill. App. 3d 581, 586 (1985). However, as a void judgment may be challenged at any time (*Castleberry*, 2015 IL 116916, ¶ 11), we set aside this forfeiture and instead consider whether his 2000 conviction of aggravated DUI is indeed void.

¶ 15 If the court lacked either personal jurisdiction or subject matter jurisdiction, then the judgment is void and can be challenged at any time, either directly or collaterally, as the court did not have the authority to enter the judgment. *Castleberry*, 2015 IL 116916, ¶ 15. "A voidable judgment, in contrast, 'is one entered erroneously by a court having jurisdiction and is not subject to collateral attack.' " *Id.* ¶ 11 (quoting *People v. Davis,* 156 Ill. 2d 149, 155-56 (1993)). The court still had the ability to exert its power, it just exerted its power incorrectly. In order to correct a voidable judgment, one would have to do so in an appeal or through some other direct challenge. *In re Commitment of Phillips*, 367 Ill. App. 3d at 1042 (2006).

¶ 16 In the 2000 aggravated DUI case at issue here, the court had both personal and subject matter jurisdiction. The criminal charges brought against Bahrs established the court's subject matter jurisdiction. Ill. Const. 1970, art. VI, § 9. The court gained personal jurisdiction over Bahrs through his appearance at his arraignment on August 8, 2000. Therefore, the court had jurisdiction to hear the case, and the case cannot be void. Accordingly, Bahrs' *mandamus* claim does not fall within the exception for void judgments.

¶ 17 Bahrs argues that *Castleberry* and *People ex rel. Glasgow v. Kinney*, 2012 IL 113197, allow him to use *mandamus* to challenge his conviction here, but those cases are easily distinguishable. In both cases, it was the State requesting *mandamus* to correct judgments which did not comply with mandatory minimum sentences. The State has limited rights to appeal criminal convictions or sentences, so to correct sentences it must file for *mandamus* in the Supreme Court. *Castleberry* 2015 IL 116916, ¶ 27. A criminal defendant has no such restrictions on their rights and can file various appeals and challenges to their criminal conviction. Here, Bahrs was requesting *mandamus* in the circuit court, and Bahrs has not exhausted his ability to appeal the decisions. In fact, Bahrs has two other appeals pending in this

court. *Glasgow* and *Castleberry* suggest that the proper way for the State to correct sentencing defects is to seek a writ of *mandamus*. They do not suggest that a party may seek a writ when he or she still has other viable remedies, such as an appeal.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 20 Affirmed.