NOTICE
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NOS. 4-14-0435, 4-14-0642, 4-14-0714, 4-14-0716, 4-14-0897, 4-14-1060 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WILLIE J. BOOKER, Plaintiff-Appellant, v. (No. 4-14-0435) BRUCE RAUNER, Governor of the State of Illinois, Defendant-Appellee.	)	Appeal from Circuit Court of Sangamon County No. 13MR686 Honorable John W. Belz, Judge Presiding.

WILLIE J. BOOKER, Plaintiff-Appellant, v. (No. 4-14-0642) PATRICK QUINN, LISA MADIGAN, THE STATE OF ILLINOIS, JIM EDGAR, JAMES R. THOMPSON, and THE ILLINIOIS GENERAL ASSEMBLY, Defendants-Appellees.	)	Appeal from Circuit Court of Sangamon County No. 13CH315 Honorable John W. Belz, Judge Presiding.

WILLIE J. BOOKER, Plaintiff-Appellant, v. (No. 4-14-0714) THE ILLINOIS GENERAL ASSEMBLY, Defendant-Appellee.	)	Appeal from Circuit Court of Sangamon County No. 13CH1010 Honorable John P. Schmidt, Judge Presiding.

WILLIE J. BOOKER, Plaintiff-Appellant, v. (No. 4-14-0716) THE ILLINOIS GENERAL ASSEMBLY, JAMES R. THOMPSON, and JAMES EDGAR, Defendants-Appellees.	)	Appeal from Circuit Court of Sangamon County No. 13CH913 Honorable John P. Schmidt, Judge Presiding.

WILLIE J. BOOKER, Plaintiff-Appellant, v. (No. 4-14-0897) PATRICK QUINN, LISA MADIGAN, KIMBERLY BUTER, and SALVADOR A. GODINEZ, Defendants-Appellees.	)	Appeal from Circuit Court of Sangamon County No. 14MR239 Honorable Rudolph M. Braud, Judge Presiding.

WILLIE J. BOOKER, Plaintiff-Appellant, v. (No. 4-14-1060) JAMES R. THOMPSON, Defendant-Appellee.	)	Appeal from Circuit Court of Sangamon County No. 14MR774 Honorable John W. Belz, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) In a separate criminal case, a jury found plaintiff guilty, beyond a reasonable doubt, of the charged offenses, and therefore he lacks standing, in this civil case, to challenge the constitutionality of statutes pertaining to the preliminary determination of probable cause, which is a less demanding standard than proof beyond a reasonable doubt.

(2) The appellate court lacks subject-matter jurisdiction over a case in which the trial court has not yet ruled on a postjudgment motion.

(3) A complaint fails to state a cause of action if the complaint is, on its face, an impermissible collateral attack on criminal convictions.

(4) Failure by an appellant to file a brief results in the forfeiture of any arguments in support of the appeal.

(5) The prefiling injunction against plaintiff is modified so as to apply only to civil appeals and so as to allow plaintiff, after the passage of two years, to file a motion for the modification or termination of the prefiling injunction.

¶ 2 Plaintiff, Willie J. Booker, appeals the trial court's judgments dismissing, with prejudice, six complaints for declaratory and injunctive relief. On our own motion, we have consolidated the six appeals, and we will address them all in this order.

¶ 3 In all six appeals, plaintiff seeks to overturn one or more of his criminal convictions (for first degree murder, aggravated battery with a firearm, and aggravated criminal sexual assault) by obtaining a declaratory judgment that the statute defining the offense is unconstitutional or that statutes relating to the preliminary determination of probable cause are unconstitutional. He also seeks injunctions against the enforcement of the supposedly unconstitutional statutes.

¶ 4 It is questionable whether any of the defendants plaintiff seeks to enjoin—the Governor and the Attorney General of Illinois and the Illinois General Assembly—are legitimate stand-ins for the plaintiff in the criminal cases: the People of the State of Illinois. We need not resolve that question, however, considering that, under section 2-407 of the Code of Civil Procedure (735 ILCS 5/2-407 (West 2014)), "[n]o action shall be *** dismissed for nonjoinder of necessary parties without first affording reasonable opportunity to add them as parties."

¶ 5 But other problems stop us at the threshold before we can even consider remanding the cases for joinder of the correct defendant. In case No. 4-14-0435, plaintiff lacks standing. In case No. 4-14-0642, we lack subject-matter jurisdiction because a postjudgment

motion is still pending. Case Nos. 4-14-0714, 4-14-0716, and 4-14-0897 are, on their face, impermissible collateral attacks on plaintiff's criminal convictions. Plaintiff has forfeited any arguments in case No. 4-14-1060 because he has filed no brief in that case.

¶ 6 Therefore, we dismiss case No. 4-14-0642 for lack of subject-matter jurisdiction, and we affirm the trial court's judgments in case Nos. 4-14-0435, 4-14-0714, 4-14-0716, 4-14-0897, and 4-14-1060.

¶ 7 Having stated, at the outset, our dispositions of the six appeals, we now will discuss the appeals, one by one, explaining how we arrived at these dispositions.

¶ 8 I. CASE NO. 4-14-0435

¶ 9 A. The Amended Complaint

¶ 10 On September 18, 2013—nine years and eight months after he was sentenced for first degree murder (720 ILCS 5/9-1(a) (West 2000)) and aggravated battery with a firearm (720 ILCS 5/12-4.2(a) (West 2000))—plaintiff filed an amended complaint for declaratory and injunctive relief against Daniel Walker, a former governor of the State of Illinois. This was Sangamon County case No. 13-MR-686. The defendant was changed to Governor Patrick Quinn and, subsequently, to Governor Bruce Rauner.

¶ 11 The amended complaint against the Governor has six counts. Count I alleges that section 112-4 of the Code of Criminal Procedure of 1963 (725 ILCS 5/112-4 (West 2000)), a section with the heading "Duties of Grand Jury and State's Attorney," is "impermissibly vague" in that it "fails to command that the [grand] jury be inform[ed] of the statutory definition of the offense that the accuse[d] is alleged to have committed, when the grand jury is to deliberate and determine if there is probable cause to believe that the accuse[d] has committed that particular offense." But see *People v. DiVincenzo*, 183 Ill. 2d 239, 254 (1998) ("Prosecutors inform the

grand jury of the proposed charges and the pertinent law."). Because section 112-4 allegedly "fails to provide persons of ordinary intelligence notice of what the statute commands or forbids," count I requests a judicial declaration that section 112-4 violates due process, and it also requests an injunction barring the enforcement of section 112-4.

¶ 12 Count II appears to be, substantially, a repetition of count I, except count II emphasizes the idea that section 112-4, by its "impermissibl[e] vague[ness]," "permits and encourages arbitrary and discriminatory enforcement." Count II requests the same remedies as count I.

¶ 13 Count III alleges that section 111-2 of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-2 (West 2000)), a section with the heading "Commencement of prosecutions," is "impermissibly vague," and violates due process, in that it "fails to command that the judge make an independent determination that probable cause exist[s] before issuing the arrest warrant when presented with an information in open court, and[,] therefore, fails to provide persons of ordinary intelligence adequate notice [of] what the statute commands or forbids." Count III requests a judicial declaration that section 111-2 violates due process, and it also requests an injunction barring the enforcement of section 111-2.

¶ 14 Count IV is substantially a repetition of count III, except count IV emphasizes that section 111-2 "permits and encourages arbitrary and discriminatory enforcement" by being "impermissibly vague as to what guidelines are to govern the judge[']s discretion in determining whether probable cause exist[s] before issuing the arrest warrant." Count IV requests the same remedies as count III.

¶ 15 Count V alleges that section 107-9 of the Code of Criminal Procedure of 1963 (725 ILCS 5/107-9 (West 2000)), a section with the heading "Issuance of arrest warrant upon

complaint," is "impermissibly vague," and violates due process, in that it "fails to command that the judge show that he examine[d] upon oath or affirmation the complainant or any witnesses." Thus, according to count V, section 107-9 "fails to provide persons of ordinary intelligence adequate notice [of] what the statute commands or forbids." Count V requests a judicial declaration that section 107-9 violates due process, and it also requests an injunction barring the enforcement of section 107-9.

¶ 16 Count VI substantially repeats count V, except count VI emphasizes that the "impermissibl[e] vague[ness] of section 107-9 "encourages arbitrary and discriminatory enforcement." Count VI requests the same remedies as count V.

¶ 17 B. Dismissal With Prejudice

¶ 18 In March 2014, defendant (at that time, Governor Quinn) moved for the dismissal of the amended complaint, pursuant to sections 2-615, 2-619, and 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619, 2-619.1 (West 2014)).

¶ 19 Under the heading of section 2-615, defendant contended that plaintiff's claims were "frivolous."

¶ 20 Under the heading of section 2-619, defendant contended that not only did plaintiff lack standing, but "Defendant Quinn [was] not a proper party to this action."

¶ 21 In a docket entry dated May 1, 2014, the trial court granted defendant's motion to dismiss the amended complaint. The docket entry states:

> "The Court finds the Plaintiff's claims that statutes in question are unconstitutional, vague and without merit. Even if plaintiff's assertions were not baseless, the plaintiff lacks standing to bring them. The Court finds that all Plaintiff's arguments are without

merit. The Court denies all the Plaintiff's motions including his application for a temporary restraining order. The case is dismissed with prejudice."

¶ 22 C. Our Analysis

¶ 23 In his motion for dismissal, under the heading of "Relief Under § 2-619," defendant challenged plaintiff's standing to raise the claims that he raised in his amended complaint. Standing is a threshold issue (*International Union of Operating Engineers, Local 148 v. Illinois Department of Employment Security*, 215 Ill. 2d 37, 44 (2005); *Harris Trust & Savings Bank v. Duggan*, 95 Ill. 2d 516, 527 (1983)), so we should consider that issue before proceeding to the merits.

¶ 24 Lack of standing is an "affirmative matter" within the meaning of section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2014)), which provides that an action can be involuntarily dismissed on the ground that "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." See *Chicago Teachers Union, Local 1 v. Board of Education of the City of Chicago*, 189 Ill. 2d 200, 206 (2000). Our standard of review is *de novo* when we review dismissals pursuant to section 2-619(a)(9). *Wood River Township v. Wood River Township Hospital*, 331 Ill. App. 3d 599, 604 (2002). That means we perform the same analysis a trial court would perform in ruling on the motion for dismissal and we give no deference to the trial court's analysis. See *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 25 We assume, for the sake of argument, that the amended complaint is legally sufficient. See *People v. Philip Morris, Inc.*, 198 Ill. 2d 87, 94 (2001). In other words, we assume, for the sake of argument, that the amended complaint states a cause of action—that it

states a cause for declaring section 112-4 (725 ILCS 5/112-4 (West 2000)), section 111-2 (725 ILCS 5/111-2 (West 2000)), and section 107-9 (725 ILCS 5/107-9 (West 2000)) unconstitutional and enjoining their enforcement. See *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 29 (2003). With that assumption, the analysis proceeds in the following stages:

> "The 'affirmative matter' asserted by the defendant must be apparent on the face of the complaint or supported by affidavits or certain other evidentiary materials. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). Once a defendant satisfies this initial burden of going forward on the section 2-619(a)(9) motion to dismiss, the burden then shifts to the plaintiff, who must establish that the affirmative defense asserted either is 'unfounded or requires the resolution of an essential element of material fact before it is proven.' *Kedzie & 103rd Currency Exchange, Inc.*, 156 Ill. 2d at 116. The plaintiff may establish this by presenting 'affidavits or other proof.' 735 ILCS 5/2-619(c) (West 1992). 'If, after considering the pleadings and affidavits, the trial judge finds that the plaintiff has failed to carry the shifted burden of going forward, the motion may be granted and the cause of action dismissed.' *Kedzie & 103rd Currency Exchange, Inc.*, 156 Ill. 2d at 116." *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 383 (1997).

¶ 26 Thus, defendant had the initial burden of establishing the affirmative matter, *i.e.*, plaintiff's lack of standing. See *id.* Because defendant submitted no "affidavits or *** other

evidentiary materials," he carried his initial burden only if plaintiff's lack of standing was "apparent on the face of the [amended] complaint." *Id.*

¶ 27 To determine whether plaintiff's lack of standing was apparent from the face of the amended complaint, we must be clear what it means to have "standing." To have standing, a party must have suffered "some injury in fact to a legally cognizable interest." *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). "The claimed injury may be actual or threatened, and it must be (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Id.* In his amended complaint, the only thing plaintiff alleges about himself is that he is "a citizen of the State of Illinois." This allegation does not establish that declaring sections 112-4, 111-2, and 107-9 unconstitutional and enjoining their enforcement would likely prevent or redress an "injury in fact" to him. *Id.* For all that appears from the allegations of the amended complaint, he has initiated this lawsuit out of "mere curiosity or concern" as a "citizen." *P & S Grain, LLC v. County of Williamson*, 399 Ill. App. 3d 836, 843 (2010). Curiosity or concern does not confer standing. *Id.* "[A] party cannot gain standing merely through a self-proclaimed interest or concern about an issue, no matter how sincere." *Glisson*, 188 Ill. 2d at 231. Therefore, defendant carried his initial burden by pointing out, from the face of the amended complaint, that plaintiff apparently lacked standing. See *Epstein*, 178 Ill. 2d at 383.

¶ 28 Consequently, the burden shifted to plaintiff, who had to show that the affirmative defense of his lack of standing was unfounded or that deciding whether he had standing would require the resolution of a question of fact. See *id.* In response to defendant's motion for dismissal, plaintiff submitted a memorandum, in which he argued he had standing for essentially three reasons. First, invalidating sections 112-4 and 111-2 would "no longer deprive the plaintiff

of his right that a criminal statute *** be sufficiently definite so [as to] give[] persons of ordinary intelligence a reasonable opportunity to distinguish between lawful [and unlawful] conduct" and would "no longer deprive the plaintiff of his right that a penal statute *** define the criminal offense in such a manner that [it] does not encourage arbitrary or discriminatory enforcement." Second, invalidating section 112-4 would be tantamount to "declar[ing] the plaintiff's convictions, sentence[,] and imprisonment for the offense of first degree murder and aggravated battery with a firearm, [which] were obtain[ed] through the use of the duties of the grand jury and state's attorney statute, 725 ILCS 5/112-4, to be unconstitutional[,] null[,] and void under the due process clause." Third, plaintiff is in "fear of criminal prosecution under an allegedly unconstitutional statute."

¶ 29 In his brief on appeal, plaintiff narrows down his argument on standing to two points. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (any arguments omitted from the "Argument" section of the appellant's initial brief are forfeited). His first point is that, as a result of the enforcement of section 112-4, he has been convicted of first degree murder and aggravated battery with a firearm and has been sentenced and imprisoned for those offenses. His second point is that a judgment declaring section 112-4 unconstitutional would invalidate the indictment and therefore his convictions.

¶ 30 The fallacy of these two points—beyond the failure to cite any pertinent supporting authority (see *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19)—is that the proximate cause of plaintiff's convictions was not the grand jury proceeding but, rather, the jury's verdicts of guilt beyond a reasonable doubt, and given those verdicts, the indictment was justified. In other words, even assuming the unconstitutionality of section 112-4 (and we emphasize we are making that assumption merely for purposes of assessing plaintiff's standing

(see *Philip Morris, Inc.*, 198 Ill. 2d at 94; *Cwikla*, 345 Ill. App. 3d at 29)), plaintiff ultimately suffered no harm, considering that the function of the grand jury was to determine whether there was probable cause to believe he had committed a crime, thus warranting a trial (see *DiVincenzo*, 183 Ill. 2d at 254), and the subsequent finding of guilt beyond a reasonable doubt encompassed and exceeded the standard of probable cause. See *United States v. Mechanik*, 475 U.S. 66, 70 (1986) ("But the petit jury's subsequent guilty verdict means not only that there was probable cause to believe that the defendants were guilty as charged, but also that they are in fact guilty as charged beyond a reasonable doubt. Measured by the petit jury's verdict, then, any error in the grand jury proceeding connected with the charging decision was harmless beyond a reasonable doubt."); *People v. Boyle*, 161 Ill. App. 3d 1054, 1065 (1987). Because any error in the grand jury proceeding was ultimately harmless in the light of the subsequent guilty verdicts, plaintiff lacks standing. See *Glisson*, 188 Ill. 2d at 221.

¶ 31 II. CASE NO. 4-14-0642

¶ 32 On June 12, 2013, in Sangamon County case No. 13-CH-315, plaintiff filed a complaint against four defendants: Patrick Quinn in his capacity as Governor of Illinois; two former governors of Illinois, James R. Thompson and James Edgar; and Lisa Madigan in her capacity as Attorney General of Illinois. Paragraph 4 of the complaint stated:

> "4. This is a proceeding for a declaratory judgment and an injunction to declare Section 5, Sec. 12-4.2 of Public Act 88-433 [(House Bill 2158, hereinafter 'H.B. 2158') which transfers the offense Aggravated Battery with a firearm from the Ill. Rev. Stat. Ch. 38, ¶ 12-4.2, into the Illinois Compiled Statutes 'Aggravated battery with a firearm, 720 ILCS 5/12-4.2,' approved by the

> legislature on May 25, 1993. Approved by Governor Jim Edgar on August 20, 1993, and became effective January 1, 1994,] to be unconstitutional and, therefore, null and void, under the Illinois and United States' Constitutions and to enjoin the defendants and any person acting in concert with the defendants, from enforcing the first degree murder statute." (Brackets in original.)

¶ 33 The Governor and the Attorney General moved to dismiss the complaint, with prejudice, pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2012)). On November 12, 2013, the trial court granted their motion for dismissal but noted that the two remaining defendants, Thompson and Edgar, had not yet been served.

¶ 34 On July 7, 2014, the court dismissed plaintiff's complaint as to those remaining two defendants.

¶ 35 On July 10, 2014, plaintiff filed a notice of appeal.

¶ 36 On July 16, 2014, plaintiff filed a document entitled "Amended Motion To Vacate Void Judgment," in which he asked the trial court to vacate its order of July 7, 2014. The court has not yet ruled on plaintiff's motion of July 16, 2014. Consequently, we lack subject-matter jurisdiction over the appeal in case No. 4-14-0642.

¶ 37 Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008) provides: "When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered." Plaintiff's postjudgment motion

was timely because he filed it within 30 days after the final judgment of July 7, 2014. "In all cases tried without a jury, any party may, within 30 days after the entry of the judgment ***, file a motion *** to vacate the judgment or for other relief." 735 ILCS 5/2-1203(a) (West 2014). Until the trial court rules on plaintiff's postjudgment motion, his notice of appeal is ineffective, and we lack subject-matter jurisdiction. See Ill. S. Ct. R. 303(a)(2) (eff. May 30, 2008).

¶ 38 Therefore, we dismiss the appeal in case No. 4-14-0642 for lack of subject-matter jurisdiction.

¶ 39 III. CASE NO. 4-14-0714

¶ 40 A. The Complaint

¶ 41 On June 13, 2014, in Sangamon County case No. 13-CH-1010, plaintiff filed a complaint against the Illinois General Assembly. In his complaint, he alleged he was "confined at Menard Correctional Center," serving consecutive prison terms of 36 years for first degree murder (720 ILCS 5/9-1(a) (West 2000)) and 22 years for aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2000)), having been found guilty of those offenses in October 2003, by a jury trial in Winnebago County case Nos. 01-CF-2346 and 01-CF-2287. He sought a declaration that the statutes defining those offenses were "unconstitutional, null[,] and void"—and that his convictions of those offenses consequently were "unconstitutional, null[,] and void."

¶ 42 According to the complaint, section 9-1(a) of the Criminal Code of 1961 (720 ILCS 5/9-1(a) (West 2000)) was "impermissibly vague" in that it "fail[ed] to set forth any standard regulating what act or acts [would] constitute the offense of first degree murder," "leav[ing] a person to speculate as to what the statute command[ed] or forb[ade]." Likewise, according to the complaint, section 12-4.2(a)(1) of the Criminal Code of 1961 (720 ILCS 5/12-4.2(a)(1) (West 2000)) was "impermissibly vague" in that it "fail[ed] to set forth any standard

regulating what conduct [would] constitute the underlying offense of battery," "leav[ing] a person to speculate as to what the statute command[ed] or forb[ade]."

¶ 43 In addition to the declaration of unconstitutionality, the complaint sought an injunction "barring [the] enforcement" of those statutes.

¶ 44 B. Dismissal With Prejudice

¶ 45 The General Assembly moved to dismiss the complaint, with prejudice, on two grounds: (1) sovereign immunity and (2) failure to state a cause of action.

¶ 46 On August 4, 2014, the trial court granted the motion for dismissal on three grounds: (1) failure to state a cause of action (concluding that the statutes were not unconstitutionally vague), (2) sovereign immunity, and (3) *res judicata*. Plaintiff appeals.

¶ 47 C. Our Analysis

¶ 48 In our *de novo* review, we agree that the complaint fails to state a cause of action, because it is apparent, from the face of the complaint, that plaintiff is mounting an *ad hoc* collateral attack on his convictions of first degree murder and aggravated battery with a firearm, for which he is imprisoned. See *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 13; *Malone v. Cosentino*, 99 Ill. 2d 29, 32-33 (1983); *Tait v. County of Sangamon*, 138 Ill. App. 3d 169, 172 (1985). The supreme court has said: "Once a court with proper jurisdiction has entered a final judgment, that judgment can only be attacked on direct appeal, or in one of the traditional collateral proceedings now defined by statute. Ill. Rev. Stat. 1981, ch. 110, pars. 10-101 to 10-137 (*habeas corpus*); Ill. Rev. Stat. 1981, ch. 110, par. 2-1401 (relief from judgments); Ill. Rev. Stat. 1981, ch. 38, pars. 122-1 to 122-7 (post-conviction hearing)." *Malone*, 99 Ill. 2d at 32-33. In other words, if the legislature has provided a procedural vehicle by which to mount a collateral challenge to a final judgment, that vehicle must be used. One cannot resort to some

"*ad hoc* collateral proceeding" (*id.* at 33), such as a proceeding for declaratory judgment (*Tait*, 138 Ill. App. 3d at 172).

¶ 49 We realize that "a challenge to the constitutionality of a statute may be raised at any time" (*People v. McCarty*, 223 Ill. 2d 109, 123 (2006)), but that is not the same as saying, "A challenge to the constitutionality of a statute may be raised in any proceeding and by any procedure." For persons imprisoned in Illinois for committing criminal offenses, the legislature has provided a procedure by which to collaterally challenge the constitutionality of the statutes defining those offenses: a proceeding pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2014)). Therefore, if plaintiff wishes to collaterally attack his convictions of first degree murder and aggravated battery with a firearm by challenging the constitutionality of the statutes defining those offenses, he must do so in a postconviction proceeding in Winnebago County (see 725 ILCS 5/122-1(b) (West 2014); *Malone*, 99 Ill. 2d at 32-33), not in an "*ad hoc* collateral proceeding" in Sangamon County (*id.* at 33).

¶ 50 IV. CASE NO. 4-14-0716

¶ 51 A. The Complaint

¶ 52 On October 28, 2013, in Sangamon County case No. 14-CH-122, plaintiff filed a complaint against the Illinois General Assembly; two former governors of Illinois, James R. Thompson and James Edgar; and Lisa Madigan in her capacity as the Attorney General of Illinois. The complaint alleged that on December 3, 1994, in "People of the State of Illinois v. Willie J. Booker, [Winnebago case] No. 94CF892," plaintiff "was convicted and sentenced to a[n] eight year term of imprisonment for the offense of aggravated criminal sexual assault," a sentence that he had fully served. (It was evident, however, from the face of the complaint, that plaintiff was still in prison: he alleged he was residing in Menard, Illinois, and he appended an

inmate number to his name: B61837.) In his complaint, plaintiff sought a declaration that the statute defining the offense of aggravated criminal sexual assault ("720 ILCS 5/12-14(a)")—and hence his conviction of that offense—was unconstitutional, a violation of due process, in that the statute "fail[ed] to set forth any standard regulating what constitute[d] criminal sexual assault and therefore, fail[ed] to provide persons of ordinary intelligence adequate notice of what the statute command[ed]." (Section 12-14(a) of the Criminal Code of 1961 (720 ILCS 5/12-14(a) (West 1994)) is now codified as section 11-1.30(a) of the Criminal Code of 2012 (720 ILCS 5/11-1.30(a) (West 2014)).) He also sought an "injunction enjoining the enforcement of 720 ILCS 5/12-14(a)."

¶ 53 On November 6, 2013, plaintiff served his complaint on the General Assembly. A month later, he moved to voluntarily dismiss Thompson and Edgar.

¶ 54 B. Plaintiff's Motions for a Default Judgment and Summary Judgment

¶ 55 On December 9, 2013, plaintiff filed a motion for a default judgment against the General Assembly and an alternative motion for summary judgment.

¶ 56 On February 28, 2014, the General Assembly moved for a 30-day extension to respond to plaintiff's complaint. The General Assembly explained that its lateness in responding to the complaint was due to an "administrative error" and that it had a number of good-faith defenses, including plaintiff's lack of standing, *res judicata*, legislative immunity, and the legal insufficiency of the complaint.

¶ 57 C. Dismissal With Prejudice

¶ 58 In March 2014, the General Assembly filed a motion for dismissal pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2014)). In its motion, the General Assembly argued: (1) it had sovereign immunity and legislative immunity, (2) the

complaint failed to state a cause of action for declaratory and injunctive relief, (3) plaintiff lacked standing because he had fully served his sentence for aggravated criminal sexual assault, and (4) *res judicata* barred the action.

¶ 59 After the Attorney General was served, she filed a motion for dismissal similar to the General Assembly's motion.

¶ 60 On August 4, 2014, the trial court ruled on the pending motions. In its order, the court granted plaintiff's motion to voluntarily dismiss Thompson and Edgar but denied his motion for permission to file an amended complaint. The court granted the motions by the General Assembly and the Attorney General to dismiss the complaint. The court found, specifically: "[T]he aggravated criminal sexual assault statute is not unconstitutional or vague; plaintiff lacks standing to challenge the criminal sexual assault statute; plaintiff's claims are barred by *res judicata*; and declaratory relief in this action is not available to plaintiff." In the light of these rulings, the court deemed plaintiff's motion for a default judgment and motion for a summary judgment to be moot.

¶ 61 D. Our Analysis

¶ 62 "Whether to grant or deny a motion [for default judgment] is within the sound discretion of the trial court, and *** will not be reversed absent an abuse of discretion or a denial of substantial justice." *Jackson v. Bailey*, 384 Ill. App. 3d 546, 548 (2008). "[T]he existence of a meritorious defense" is relevant to the question of "substantial justice." *Id.* at 549. The General Assembly had a meritorious defense to plaintiff's complaint, namely, the failure of the complaint to state a cause of action. The complaint failed to state a cause of action because, like the complaint in Sangamon County case No. 13-CH-1010, it violated the collateral attack rule. Because of this meritorious defense and because of the bizarre choice of the General Assembly

as a defendant, we find no abuse of discretion in the denial of plaintiff's motion for a default judgment against the General Assembly. See *id.*

¶ 63 Again, the meritorious defense is the collateral attack rule. The legislature has provided plaintiff a procedural vehicle for collaterally challenging his convictions on constitutional grounds, the Post-Conviction Hearing Act, and he must use that procedural vehicle. Although plaintiff has served his sentence for aggravated criminal sexual assault, he is still imprisoned on other consecutive sentences (for first degree murder and aggravated battery with a firearm), and thus, even for purposes of his conviction of aggravated criminal sexual assault, he meets the description of a "person imprisoned in the penitentiary," to quote section 122-1(a) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(a) (West 2014)). See *People v. Pack*, 224 Ill. 2d 144, 152 (2007). On its face, the complaint institutes an "*ad hoc* collateral proceeding" that should be a proceeding under the Post-Conviction Hearing Act or some other applicable statutory procedure for collaterally challenging judgments. *Malone*, 99 Ill. 2d at 33. As an "impermissible collateral attack," the complaint fails to state a cause of action. *Tait*, 138 Ill. App. 3d at 172; *Cf. People v. Warr*, 54 Ill. 2d 487, 493 (1973) (allowing an *ad hoc* collateral attack on misdemeanor convictions because the legislature had provided no procedure by which to collaterally attack misdemeanor convictions on constitutional grounds).

¶ 64 V. CASE NO. 4-14-0897

¶ 65 A. The Second Amended Complaint

¶ 66 On October 14, 2014, in Sangamon County case No. 14-MR-239, plaintiff filed a second amended complaint against Kimberly Butler in her capacity as the warden of Menard Correctional Center, Salvador A. Godinez in his capacity as the director of the Illinois Department of Corrections, and Patrick Quinn in his capacity as the Governor of Illinois.

¶ 67 In his second amended complaint, plaintiff alleged that on January 20, 2004, in Winnebago County case Nos. 01-CF-2346 and 01-CF-2287, the circuit court sentenced him to consecutive prison terms of 36 years for first degree murder (720 ILCS 5/9-1(a) (West 2000)) and 22 years for aggravated battery with a firearm (720 ILCS 5/12-4.2(d)(1) (West 2000)), after a jury found him guilty of those offenses. He claimed that those convictions and sentences resulted from an "overly broad" provision of the Illinois Constitution, namely, article VI, § 9, which conferred upon circuit courts "original jurisdiction of all justiciable matters" (with exceptions not relevant here). Ill. Const. 1970, art. VI, § 9. According to the second amended complaint, article VI, § 9, was "overly broad," and hence violated due process, in that it "encompass[ed] innocent as well as culpable conduct," it lacked "any language prohibiting circuit courts from exercising original jurisdiction over matters capable of being tried in the federal courts," and it "[did] not bear a reasonable relationship to its purpose."

¶ 68 Plaintiff sought a declaration that article VI, § 9, was "unconstitutional, null[,] and void under the [Illinois and federal constitutions]" and that his convictions of first degree murder and aggravated battery with a firearm were, therefore, "unconstitutional, null[,] and void." He also sought "appropriate injunctive relief enjoining the enforcement of [his] convictions for first degree murder and aggravated battery with a firearm."

¶ 69 B. The Dismissal With Prejudice

¶ 70 Defendants moved to dismiss the second amended complaint, with prejudice, on the grounds of failure to state a cause of action (735 ILCS 5/2-615 (West 2014)) and sovereign immunity (735 ILCS 5/2-619(a)(9) (West 2014)).

¶ 71 On September 26, 2014, the trial court granted defendants' motion.

¶ 72 C. Our Analysis

¶ 73 The second amended complaint in this case is another "impermissible collateral attack" on plaintiff's convictions of first degree murder and aggravated battery with a firearm. *Tait*, 138 Ill. App. 3d at 172. The only difference between this case and case No. 4-14-0714 is that he bases the collateral attack on the supposed unconstitutionality of article VI, § 9, of the Illinois Constitution instead of on the supposed unconstitutionality of sections 9-1(a) and 12-4.2(a)(1) of the Criminal Code of 1961. Because the second amended complaint, on its face, violates *Malone* and *Tait*, it fails to state a cause of action. See *Simpkins*, 2012 IL 110662, ¶ 13. (We note, incidentally, that the trial court was not required to recharacterize any of these complaints as petitions for postconviction relief. See *People v. Harris*, 391 Ill. App. 3d 246, 248 (2009).)

¶ 74 VI. CASE NO. 4-14-1060

¶ 75 A. The Amended Complaint

¶ 76 On October 8, 2014, in Sangamon County case No. 14-MR-0774, plaintiff filed an amended complaint against a single defendant, James R. Thompson, a former governor of Illinois. In his amended complaint, plaintiff made the same constitutional attacks on section 9-1(a) and section 12-4.2(a) that he had made in Sangamon County case Nos. 13-CH-315 and 13-CH-1010.

¶ 77 B. The Dismissal With Prejudice

¶ 78 Defendant filed a motion to dismiss the original and amended complaints, with prejudice, on two grounds: (1) sovereign immunity and (2) failure to state a cause of action.

¶ 79 In addition to a memorandum opposing the motion for dismissal, plaintiff filed a motion for summary judgment.

¶ 80 In a docket entry dated November 25, 2014, the trial court stated as follows:

> "The court allows the Plaintiff to file his amended complaint without objection. The parties then presented oral arguments on the Defendant's Motion to Dismiss. After taking the matter under advisement, the Court grants the Defendant's Motion to Dismiss with prejudice. The court finds the Plaintiff's claims are barred by res judicata. The Plaintiff has brought two previous actions making the same claim in Sangamon County Court. Additionally, the court finds declaratory relief is not appropriate under the facts of the case. The case is dismissed with prejudice."

¶ 81 C. Our Analysis

¶ 82 Plaintiff has forfeited any arguments in this appeal, having filed no brief. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Therefore, on the basis of forfeiture, we affirm the trial court's judgment in case No. 4-14-1060.

¶ 83 VII. MODIFICATION OF THE PREFILING INJUNCTION

¶ 84 Because we decided these six appeals on the basis of plaintiff's lack of standing, our own lack of subject-matter jurisdiction, the collateral attack rule, and forfeiture, we did not reach the merits of any of these appeals. The merits are relevant, however, for purposes of sanctions we have imposed pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994).

¶ 85 We do not see how a reasonable, prudent person could, in good faith, make the arguments that plaintiff makes in these appeals. See *First Federal Savings Bank of Proviso Township v. Drovers National Bank of Chicago*, 237 Ill. App. 3d 340, 344 (1992). For example, plaintiff takes a principle of due process applicable only to statutes that define crimes—the principle that "proscriptions of a criminal statute [must] be clearly defined"—and applies it to

statutes that define no crime, *i.e.*, sections 107-9, 111-2, and 112-4 of the Code of Criminal Procedure of 1963 (725 ILCS 5/107-9, 111-2, 112-4 (West 2000)) and article VI, § 9, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 9), without making any argument whatsoever in favor of extending this principle to purely procedural statutes or to a jurisdictional provision of the constitution. *City of Chicago v. Morales*, 177 Ill. 2d 440, 448 (1997). Even when plaintiff applies this principle to statutes that actually define criminal conduct, his arguments are nonsensical. For example, he argues that the first degree murder statute (720 ILCS 5/9-1(a)(1) (West 2000)) is "unconstitutionally vague" as to the meaning of the word "acts" when the statute provides: "A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death[,] *** he *** intends to kill or do great bodily harm to that individual or another[.]" No sensible person could be uncertain about the meaning of the word "acts." An "act" is something someone does. Also, plaintiff argues that the statute criminalizing aggravated battery with a firearm (720 ILCS 5/12-4.2(a) (West 2000)) is "unconstitutionally vague" in that it fails to define the term "battery." That argument likewise is frivolous. Plaintiff was chargeable with knowledge not only of section 12-4.2(a) of the Criminal Code of 1961 but also section 12-3(a) (720 ILCS 5/12-3(a) (West 2000)), which described what a "battery" was.

¶ 86 On February 25, 2015, in *Booker v. Quinn*, 2015 IL App (4th) 140572-U, after ordering plaintiff to show cause, we imposed a sanction of $500 upon him, and we "[left] in place our previous order directing the Clerk of this Court not to accept any further pleadings from [him]." In our order to show cause, we cited the barrage of frivolous appeals we had received from plaintiff (*id.* ¶ 19)—six of which we specifically address in this order.

¶ 87 Because a sanction, however, should be tailored to the abuse, we modify our prefiling injunction so as to apply only to further appeals by plaintiff in civil matters. See *In re Anderson*, 511 U.S. 364, 365-66 (1994); *In re Sassower*, 510 U.S. 4, 4 (1993); *Support Systems International, Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995). We will not bar any appeals by him in criminal cases in which he is a defendant. But until he pays the $500 in sanctions we imposed on him, we will accept no further appeals from him in civil cases. See i*d.* Because the law frowns on perpetual orders, we authorize plaintiff to submit to this court, no earlier than two years after the date of this order, a motion to modify or rescind the prefiling injunction. See *id.*

¶ 88 In sum, then, we modify the prefiling injunction as stated; we dismiss case No. 4-14-0642 for lack of subject-matter jurisdiction; and we affirm the trial court's judgments in case Nos. 4-14-0435, 4-14-0714, 4-14-0716, 4-14-0897, and 4-14-1060. Also, we award the State $300 in costs ($50 for each appeal). See 55 ILCS 5/4-2002(a) (West 2014).

¶ 89 No. 4-14-0642, dismissed.
Nos. 4-14-0435, 4-14-0714, 4-14-0716, 4-14-0897, and 4-14-1060, affirmed.