NOTICE
Decision filed 04/05/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0441

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).

RODNEY D. BARNHILL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Franklin County.
	)	
v.	)	No. 85-CF-60
	)	
DAVE REDNOUR, Warden,	)	Honorable
	)	Loren P. Lewis,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Donovan and Spomer concurred in the judgment.

R U L E 2 3 O R D E R

Held: The circuit court properly dismissed the plaintiff's *habeas corpus* complaint where it failed to state a cause of action and also was barred by *res judicata* principles.

The plaintiff, Rodney D. Barnhill, an inmate serving a natural-life term of imprisonment in the Department of Corrections, filed a complaint for *habeas corpus* relief in the circuit court of Franklin County. Donald Gaetz, then the warden of Menard Correctional Center,[1] filed a motion to dismiss the complaint, which the court granted. The plaintiff appeals.

BACKGROUND

On July 9, 1986, the plaintiff entered an open plea of guilty but mentally ill to the July

[1] Dave Rednour has replaced Donald Gaetz as the warden of Menard Correctional Center and has been substituted as the defendant-appellee for this appeal. See *Hennings v. Chandler*, 229 Ill. 2d 18, 27 (2008).

4, 1985, murder of a 14-year-old girl (see Ill. Rev. Stat. 1985, ch. 38, par. 9-1(a)(2) (now 720 ILCS 5/9-1(a)(2) (West 2008))), and on July 30, 1986, the circuit court imposed a natural-life prison sentence.

On direct appeal, the plaintiff made the following arguments: (1) that the circuit court had not substantially complied with the requirements of Supreme Court Rule 402(b) (eff. Feb. 1, 1981) because it had not asked the plaintiff if he had been promised anything in exchange for his plea of guilty, (2) that his plea was involuntary because his counsel and an investigator had promised him that if he pleaded guilty, he would be sentenced to the Department of Mental Health (now the Department of Human Services), (3) that the sentence of natural-life imprisonment was excessive, and (4) that the statute authorizing his natural-life imprisonment–based upon a finding that the crime was the result of exceptionally brutal or heinous behavior indicative of wanton cruelty (Ill. Rev. Stat. 1985, ch. 38, par. 1005-8-1(a)(1)(b))–was unconstitutionally vague. *People v. Barnhill*, 188 Ill. App. 3d 299, 302 (1989) (No. 5-87-0818). This court rejected those arguments and affirmed his conviction and sentence.

On April 24, 1995, the plaintiff filed *pro se* a complaint for *habeas corpus* relief, but he failed to pursue it further.

On June 6, 2000, the plaintiff filed *pro se* a motion for a retrial and to vacate his sentence. He alleged that he had been improperly denied a competency hearing. The circuit court considered the motion, in part, as a postconviction petition. On June 31, 2000, the circuit court found that prior to his plea of guilty, the plaintiff had been examined by a board-certified psychiatrist to determine his fitness to stand trial. The psychiatrist, who was aware that the plaintiff had been taking the drug Prolixin, found him competent to understand the charges against him and to cooperate in his defense. The court found that the plaintiff had not made a substantial showing that his constitutional rights had been violated, that he had

forfeited the issue because it could have been raised on direct appeal, and that the motion was time-barred as a postconviction petition. The court denied the plaintiff's motion as being patently without merit.

On appeal from the circuit court's order, the plaintiff made only new arguments. He argued (1) that the rule announced in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), applied retroactively to his conviction and sentence and (2) that the enactment of Public Act 83-942 (eff. Nov. 23, 1983), which amended the Post-Conviction Hearing Act (Ill. Rev. Stat. 1983, ch. 38, par. 122-1 *et seq.* (now 725 ILCS 5/122-1 *et seq.* (West 2008))) to require the dismissal of certain petitions prior to the appointment of counsel, violated the single-subject rule of the Illinois Constitution. *People v. Barnhill*, No. 5-00-0448 (Dec. 4, 2001) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)). This court rejected those arguments and affirmed the circuit court's denial of his motion.

On August 16, 2004, the plaintiff filed *pro se* a petition for relief from judgment pursuant to section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2002)). He asserted again that *Apprendi* applied retroactively to his 1986 guilty plea and that his conviction was void. The State filed a motion to dismiss, arguing that the petition was untimely, that the *Apprendi* claim was without merit, that in any event *Apprendi* did not apply retroactively, and that the plaintiff's claim was barred by the *res judicata* doctrine. On October 27, 2004, following the circuit court's review of the petition, the State's motion, and the plaintiff's response, the court granted the State's motion.

On appeal, the plaintiff again raised *Apprendi*-based challenges to his sentence; this court rejected the challenges and affirmed the dismissal of his petition. *People v. Barnhill*, No. 5-04-0753 (Apr. 13, 2006) (unpublished Rule 23 order).

On March 18, 2009, the plaintiff filed *pro se* a motion for leave to file a successive postconviction petition. The plaintiff asserted (1) that he was entitled to file a successive

petition because his decision to plead guilty but mentally ill had been improperly induced by the promises of his plea attorney and the State's investigator, (2) that his appellate counsel on direct appeal had provided inadequate assistance by not raising this issue on direct appeal, and (3) that his prior postconviction petition had been improperly dismissed as frivolous and patently without merit. On April 29, 2009, the circuit court concluded that the plaintiff had failed to satisfy the cause-and-prejudice test, and the court denied the plaintiff's motion. The plaintiff did not appeal that ruling.

Instead, on May 26, 2009, the plaintiff filed *pro se* his complaint for *habeas corpus* relief. He asserted that he was entitled to his immediate release from prison because his conviction was void. He claimed that the circuit court's acceptance of his guilty plea was a void act because he was not mentally competent to plead guilty and his plea was the product of the investigating police officer's "implied promise" and coercion, and he argued that the court should have decreased his sentence because of his mental status. He also alleged that counsel on his direct appeal was ineffective regarding his claims of "diminished capacity" and "organic dysfunction." The State filed a motion to dismiss under sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2008)), arguing that the complaint failed to state a cause of action for *habeas corpus* relief and that the claims were barred by the *res judicata* doctrine. On August 3, 2009, the circuit court granted the State's motion to dismiss.

In this appeal, the arguments in the parties' briefs mirror their pleadings in the circuit court.

STANDARD OF REVIEW

A section 2-615 motion to dismiss tests the legal sufficiency of the complaint, while a section 2-619 motion to dismiss admits the legal sufficiency of the complaint but asserts affirmative matter outside the complaint that defeats the cause of action. *Kean v. Wal-Mart*

Stores, Inc., 235 Ill. 2d 351, 361 (2009). Under either section of the Code, our standard of review is *de novo*. *Id*. As a general rule, the reviewing court may affirm the trial court's decision on a *habeas corpus* complaint on any legal basis that is apparent from the record, regardless of whether the lower court relied upon that ground. *People v. Boswell*, 148 Ill. App. 3d 915, 918 (1986).

DISCUSSION

"[A] *habeas corpus* proceeding is a civil action, separate and distinct from the underlying criminal proceeding, and is brought to enforce a civil right of personal liberty, which the plaintiff claims *** against those who are holding him in custody[] under the criminal process." *Hennings v. Chandler*, 229 Ill. 2d 18, 23-24 n.2 (2008) (citing *People ex rel. Ross v. Ragen*, 391 Ill. 419, 422-23 (1945)). The Illinois Supreme Court recently discussed the parameters of *habeas corpus* proceedings:

> "*Habeas corpus* provides relief only on the grounds specified in section 10-124 of the Code of Civil Procedure (735 ILCS 5/10-124 (West 1996)). [Citations.] It is well established that an order of *habeas corpus* is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court that lacked jurisdiction of the subject matter or the person of the petitioner, or where there has been some occurrence subsequent to the prisoner's conviction that entitles him to release. [Citations.] A complaint for order of *habeas corpus* may not be used to review proceedings that do not exhibit one of these defects, even though the alleged error involves a denial of constitutional rights. [Citations.] Although a void order or judgment may be attacked 'at any time or in any court, either directly or collaterally' [citation], including a *habeas* proceeding [citations], the remedy of *habeas corpus* is not available to review errors which only render a judgment voidable and are of a nonjurisdictional nature." *Beacham v. Walker*, 231 Ill. 2d 51, 58-59 (2008).

In his *habeas corpus* complaint and in his brief, the plaintiff has simply recast previously made claims by adding the claims that his conviction is void and that counsel was ineffective. (We note that even if his claims of error were valid, his conviction would be voidable, not void, and the plaintiff does not cite any authority holding otherwise.) The circuit court properly granted the defendant's motion to dismiss the complaint on the ground that the plaintiff's complaint was insufficient to state a cause of action for relief. The plaintiff has not shown, either in the circuit court or in this court, that he is entitled to relief on any ground cognizable in a *habeas corpus* proceeding.

Moreover, all the underlying claims in his complaint had been litigated and decided adversely to him previously–on the merits on direct appeal, in his "motion for retrial and to vacate sentence," and/or in his petition for relief from judgment. We need not discuss these allegations further.

Regarding the plaintiff's claims of ineffective assistance of counsel, counsel cannot be ineffective for failing to raise issues that have no merit. See *People v. Jones*, 144 Ill. 2d 242, 283 (1991).

Finally, the court notes that if the plaintiff again files a legal document raising claims that have previously been fully litigated and thus are subject to *res judicata*, he runs the risk that the document will be found frivolous under section 22-105 of the Code of Civil Procedure (735 ILCS 5/22-105 (West 2008)). That ruling would require the plaintiff to make full payment of filing fees and actual court costs.

CONCLUSION

For the foregoing reasons, the circuit court's dismissal of the plaintiff's *habeas corpus* complaint is affirmed.

Affirmed.