INDEX TO APPENDICES

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
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Rafael Alvarado
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Menard Correctional Center
P.O. Box 1000
Menard IL 62259

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
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May 22, 2019

In re: Rafael Alvarado, petitioner, v. Jacqueline Lashbrook, etc., respondent. Leave to appeal, Appellate Court, Fifth District. 124559

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 06/26/2019.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

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August 28, 2019

FIRST DISTRICT OFFICE
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Mr. Rafael Alvarado
Reg. No. M-01998
Menard Correctional Center
P.O. Box 1000
Menard, IL 62259

Re: Rafael Alvarado, petitioner, v. Jacqueline Lashbrook, Warden, Respondent.
No. 124559

Dear Mr. Alvarado:

This will acknowledge receipt of your letter on today's date.

You are advised that your petition for leave to appeal was filed in this Court on February 25, 2019. The Court denied your petition for leave to appeal on May 22, 2019, and the mandate issued to the lower court on June 26, 2019, thus closing the case in this Court. **You are advised that an opinion was NOT filed in the Illinois Supreme Court.** However, we are enclosing a copy of the Appellate Court's decision and a copy of our Court's mandate in hopes that this will help you file your petition for certiorari in the United States Supreme Court.

Very truly yours,

Carolyn Taft Grosboll
Clerk of the Supreme Court

CTG/ak/Encl.

STATE OF ILLINOIS
SUPREME COURT

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the 13th day of May, 2019.

Present: Lloyd A. Karmeier, Chief Justice

Justice Robert R. Thomas
Justice Rita B. Garman
Justice Mary Jane Theis
Justice Thomas L. Kilbride
Justice Anne M. Burke
Justice P. Scott Neville, Jr.

On the 22nd day of May, 2019, the Supreme Court entered the following judgment:

No. 124559

Rafael Alvarado,

Petitioner

v.

Jacqueline Lashbrook, Warden,

Respondent

Petition for Leave to Appeal from Appellate Court Fifth District
5-17-0278
17MR40

The Court having considered the Petition for leave to appeal and being fully advised of the premises, the Petition for leave to appeal is DENIED.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26, 1818

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, this 26th day of June, 2019.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois

2018 IL App (5th) 170278-U

NO. 5-17-0278

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

RAFAEL ALVARADO,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Randolph County.
	)	
v.	)	No. 17-MR-40
	)	
JACQUELINE LASHBROOK, Warden,	)	Honorable
	)	Eugene E. Gross,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Barberis and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held*: Where the complaint was insufficient on its face to warrant *habeas corpus* relief, the circuit court's dismissal of the plaintiff's *habeas corpus* complaint is affirmed.

¶ 2 The plaintiff, Rafael Alvarado, appeals the *sua sponte* dismissal of his *pro se* complaint for *habeas corpus*. On appeal, he argues that the circuit court erred in dismissing his complaint because the court which entered his conviction lacked jurisdiction due to an "invalid first degree murder statute." For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On or about June 4, 2009, the plaintiff was indicted for first degree murder in violation of "Chapter 720 Act 5 Section 9-1(a)(1) [with extended term sentencing] of the Illinois Compiled Statutes 1992 as amended" and intentional homicide of an unborn child in violation of "Chapter 720 Act 5 Section 9-1.2(a)(1) of the Illinois Compiled Statutes 1992 as amended." He was convicted of both charges in 2010 and sentenced to a total of 100 years of incarceration. His convictions and sentences were affirmed on appeal. *People v. Alvarado*, 2012 IL App (1st) 103784-U. Subsequent collateral attacks on his convictions were unsuccessful. On June 26, 2017, the plaintiff filed a complaint for *habeas corpus*. He argued that because the Illinois Compiled Statutes did not become effective until 1993, the indictments were void and therefore the trial court lacked jurisdiction. The circuit court dismissed the petition *sua sponte*. The plaintiff filed this timely appeal.

¶ 5 ANALYSIS

¶ 6 On appeal, the plaintiff continues to argue that his convictions were based on nonexistent statutes and are void because his indictments cited chapter 720, act 5, sections 9-1(a)(1) and 9-1.2(a)(1), both "of the Illinois Compiled Statutes 1992 as amended," which did not take effect until 1993. Consequently, he argues, the circuit court lacked jurisdiction.

¶ 7 "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." *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008) (citing *People v. Gosier*, 205 Ill. 2d 198, 205 (2001); *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430 (1998)). The circuit court may *sua sponte* dismiss a petition for a writ of *habeas corpus* that is patently nonmeritorious or insufficient on its face. *Id.* at 59; *Hennings v. Chandler*, 229 Ill. 2d 18, 24 (2008). We apply a *de novo* standard of review to the dismissal of an application for *habeas corpus*. *Hennings*, 229 Ill. 2d at 24.

¶ 8 As plaintiff does not allege the occurrence of any postconviction event that entitles him to release, we consider only whether the allegedly defective charging instrument(s) deprived the court of jurisdiction.

¶ 9 It has long been held that jurisdiction is not " 'conferred' by the information or indictment," but instead is granted to the circuit courts by the Illinois Constitution, and that they "have jurisdiction in all cases involving offenses which fall within the ambit of section 1-5 of the Criminal Code [citation]." *People v. Gilmore*, 63 Ill. 2d 23, 26 (1976). Consequently, a defective charging instrument does not divest the court of subject matter jurisdiction. *People v. Hughes*, 2012 IL 112817, ¶ 28. Personal jurisdiction over the plaintiff is achieved by virtue of his appearance before the court. *People v. Speed*, 318 Ill. App. 3d 910, 915 (2001).

¶ 10 In this case, the plaintiff was arrested and indicted for violations of the Criminal Code of 1961, appeared before the court for trial, and was convicted and sentenced for the crimes of first degree murder and intentional homicide of an unborn child. The circuit court had subject matter jurisdiction because of the violations of the Criminal

Code and personal jurisdiction as the plaintiff appeared before it to dispute the charges against him.

¶ 11 Moreover, plaintiff's claim that the reference to "1992" of the Illinois Compiled Statutes, instead of "1993" (when the 1992 addendums would go into effect), voids his convictions is meritless. In *People v. Suastegui*, 374 Ill. App. 3d 635 (2007), the defendant was charged with first degree murder in violation of "Chapter 720, Act 5, Section 9-1-A(2) of the Illinois Compiled Statutes 1992, as amended." He was convicted following a jury trial. On appeal, he argued, *inter alia*, that his conviction was based on a nonexistent statute and was void because the Illinois Compiled Statutes did not become effective until January 1, 1993. The *Suastegui* court ruled that Public Act 87-1005 modified and amended the Legislative Reference Bureau Act (25 ILCS 135/1 *et seq.* (West 1992)) and replaced the organizational and numbering scheme of the Illinois Revised Statutes with the Illinois Compiled Statutes effective January 1, 1993. Suastegui, 374 Ill. App. 3d at 640. The court held that the defendant was properly charged with first degree murder regardless of whether his indictment referred to the Illinois Revised Statutes or the Illinois Compiled Statutes because these were merely organizational and numbering schemes which did not change the underlying first degree murder statute. *Id.*

¶ 12 As in *Suastegui*, the fact that the Illinois Compiled Statutes did not become effective until 1993 does not render the plaintiff's indictments or convictions void. Moreover, we note that the plaintiff's indictments occurred in 2009 and his convictions occurred in 2010, well after the effective date of the Illinois Compiled Statutes.

Assuming, *arguendo*, that the indictments' reference to the 1992 version of the Illinois Compiled Statutes instead of the 2002 version violated the requirement that a charging instrument set forth the statutory provision alleged to have been violated (725 ILCS 5/111-3(a)(2) (West 2002)), the plaintiff suffered no prejudice. See *People v. Melton*, 282 Ill. App. 3d 408 (1996) (posttrial claim that charging instrument cited incorrect statute does not warrant reversal unless the defendant was prejudiced by the miscitation).

¶ 13 Because the plaintiff's *habeas* complaint did not contain any set of facts that would support a finding of a jurisdictional error or postconviction event entitling him to release, the circuit court properly dismissed his complaint. *Gosier*, 205 Ill. 2d at 205.

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, the judgment of the circuit court of Randolph County is affirmed.

¶ 16 Affirmed.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

September 18, 2019

Rafael Alvarado
#M01998
Menard Correctional Center
P.O. Box 1000
Menard, IL 62259

RE: Alvarado v. Lashbrook, Warden
ILSC No. 124559

Dear Mr. Alvarado:

The above-entitled petition for writ of certiorari was originally postmarked August 5, 2019 and received again on September 17, 2019. The papers are returned for the following reason(s):

They are returned for failure to reflect the changes requested in prior correspondence.

Questions presented for review should be short and should not be argumentative or repetitive. Rule 14.1(a).

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures