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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 96 CR 6724
	)	
MAX PARRA,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice LAMPKIN and Justice GORDON concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Procedural default of defendant's voidable sentencing claim honored; judgment affirmed.
- ¶ 2 Defendant Max Parra appeals from the *sua sponte* dismissal of his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)) by the circuit court of Cook County. He maintains that the circuit court erred in dismissing his section 2-1401 petition because the consecutive sentences imposed by the trial court were not authorized by statute, and thus void, where the evidence failed to show that the attempted murder victim suffered severe bodily injury and the trial court made no such finding.

¶ 3 Following a 1997 jury trial, defendant was found guilty of the January 18, 1996, attempted murder of Tavorris Robinson and murder of Darrius Alexander at a bus terminal at 31st Street and Komensky Avenue in Chicago. He was then sentenced to respective, consecutive terms of 7 and 50 years' imprisonment. This court affirmed that judgment on direct appeal over defendant's allegation, *inter alia*, that his sentence was excessive. *People v. Parra*, No. 1-97-2874 (1998) (unpublished order under Supreme Court Rule 23). In December 1999, defendant filed a post-conviction petition in which he raised a number of issues, including the ineffectiveness of trial counsel for failing to present mitigating evidence at the sentencing hearing. The circuit court dismissed his petition, and defendant did not appeal that decision.

¶ 4 On January 5, 2010, defendant filed the instant *pro se* section 2-1401 petition for relief from judgment alleging, in relevant part, that the attempted murder victim, Robinson, was only shot in the foot, and thus did not suffer severe bodily injury as required for the imposition of consecutive sentences. He maintained that his consecutive sentences were void, and thus could be attacked at any time, and that his sentences should be ordered to run concurrently.

¶ 5 The State filed a motion to dismiss defendant's section 2-1401 petition. The State alleged that the petition was untimely, otherwise without merit, and barred by waiver or *res judicata* since defendant had previously filed a post-conviction petition.

¶ 6 Defendant subsequently filed a *pro se* memorandum of law in support of his section 2-1401 petition in which he maintained that his consecutive sentence was void, and, therefore, may be attacked at any time. He also reiterated his claim that not all gunshot wounds constitute severe bodily injury, and noted that the trial court failed to make any specific findings of severe bodily injury. He asserted that the trial court was misled by the State when it argued during sentencing that Robinson suffered gunshot "wounds" when he, in fact, only received one gunshot wound. In support of his motion, defendant attached a police report which indicates that

Robinson stated that he felt his left foot "go numb and [he] fell to the ground." After being on the ground "for awhile," he "went on the bus and waited for an ambulance."

¶ 7 At the hearing on the State's motion, October 6, 2010, the State argued that the petition was untimely, and that defendant was raising issues of facts which were well-known, established and proven at trial. The circuit court agreed with the State that defendant's petition was untimely by about 10 years, and on that basis alone, the State would be entitled to dismissal. The court, however, then addressed the "substantive matter," stating that, "at the most, the sentence is voidable, and not void," and could have been raised on direct appeal and in his post-conviction petition. The court then granted the State's motion to dismiss defendant's section 2-1401 petition.

¶ 8 On appeal, defendant solely challenges that dismissal claiming that his consecutive sentences were not statutorily authorized and are thus void. He maintains that he should have received concurrent sentences because the attempted murder victim did not sustain severe bodily injury, and he requests this court to reverse the dismissal of his petition and order his sentences to run concurrently.

¶ 9 The purpose of a section 2-1401 petition is to bring facts to the attention of the circuit court which, if known at the time of judgment, would have precluded its entry. *People v. Haynes*, 192 Ill. 2d 437, 463 (2000). To obtain relief under this section, defendant must file a petition no later than two years after the entry of the order of judgment (735 ILCS 5/2-1401 (West 2008)), and set forth a meritorious defense or claim, due diligence in presenting that defense or claim to the circuit court, and due diligence in filing the petition (*People v. Glowaki*, 404 Ill. App. 3d 169, 171 (2010)). Absent an evidentiary hearing on a petition, our review of the dismissal of a section 2-1401 petition is *de novo* (*People v. Vincent*, 226 Ill. 2d 1, 14-15 (2007)) and we may affirm a dismissal on any basis supported by the record, regardless of the reasoning

or the grounds relied upon by the circuit court (*People v. Harvey*, 379 Ill. App. 3d 518, 521 (2008)).

¶ 10 In this case, defendant's section 2-1401 petition was filed more than 10 years after the two-year limitations period expired. 735 ILCS 5/2-1401(c) (West 2008). Defendant, nonetheless, contends that he is not barred from seeking relief because he is attacking a void sentence, and is not subject to the due diligence, meritorious defense and two-year time requirements of that section.

¶ 11 The State responds that the petition was properly dismissed as untimely, that the sentence is voidable, not void, and therefore not cognizable in a collateral section 2-1401 proceeding. The State maintains that defendant's disagreement with the trial court's view of the evidence does not speak to whether it lacked statutory authority to enter the order, but, rather, is a fact-based challenge that the evidence at trial was insufficient to show severe bodily injury which is a voidable, not void, challenge.

¶ 12 Defendant replies that when a sentencing court "erroneously concludes that the facts support a particular sentence, the sentence is void," citing *People v. Johnson*, 2011 IL App (1st) 092817, and *People v. Rodriguez*, 355 Ill. App. 3d 290 (2005). He maintains that if this court finds that the evidence was insufficient to prove that the attempted murder victim suffered severe bodily injury, his sentence was entered without jurisdiction and is void.

¶ 13 Whether a judgment is void or voidable presents a question of jurisdiction, and jurisdiction is a fundamental prerequisite to a valid prosecution and conviction. *People v. Davis*, 156 Ill. 2d 149, 155 (1993). A void judgment is one entered by a court which lacks jurisdiction of the parties or the subject matter or which lacks the inherent power to make or enter the particular order involved (*People v. Wade*, 116 Ill. 2d 1, 5 (1987)), *i.e.*, the judgment exceeds the court's legislatively proscribed inherent powers (*People v. Moran*, 2012 IL App (1st) 111165,

¶29). Where there is no jurisdiction, and thus, a void judgment, the judgment may be attacked either directly or indirectly at any time. *Davis*, 156 Ill. 2d at 155.

¶ 14 On the other hand, a voidable judgment is one entered erroneously by the court having jurisdiction and is not subject to collateral attack. *Davis*, 156 Ill. 2d at 155-56. Once a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction acquired, and accordingly, the court may not lose jurisdiction because it made a mistake in determining either the facts, the law or both. *Davis*, 156 Ill. 2d at 156. If the judgment is voidable, it is not subject to collateral attack without regard to whether defendant followed the necessary procedural requirements for preserving the issue for review. *People v. Coady*, 156 Ill. 2d 531, 538 (1993).

¶ 15 Here, defendant maintains that the consecutive sentences imposed by the trial court were not statutorily authorized because there was no severe bodily injury to the attempted murder victim, and thus, the trial court was without jurisdiction to enter the consecutive sentences. A sentence that is not authorized by statute, is void (*People v. Thompson*, 209 Ill. 2d 19, 23 (2004)); however, where the trial court imposes an excessive sentence because of a mistake of law or fact, the sentence is merely voidable and the error can be waived (*People v. Brown*, 225 Ill. 2d 188, 205 (2007)).

¶ 16 In this case, defendant was sentenced to consecutive sentences based on section 5-8-4(a) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-4(a) (West 1996)). That section, which was in effect at the operative time, provided, in relevant part, that the court shall not impose consecutive sentences for offenses which were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective, unless one of the offenses for which defendant was convicted was a Class X or Class 1 felony and defendant inflicted severe bodily injury, in which event the court shall enter sentences to run consecutively. When defendant committed these crimes in 1996, murder was not a triggering

offense for consecutive sentencing under this section (*People v. Whitney*, 188 Ill. 2d 91, 99-100 (1999)), and there was also no requirement that the trial court set forth its findings on the record (*People v. Johnson*, 368 Ill. App. 3d 1146, 1170 (2006)). Thus, defendant's contrary claim regarding the necessity of those findings is, in itself, of no moment here.

¶ 17 Defendant further maintains that the consecutive sentences imposed were void because "the evidence adduced at trial" was insufficient to support the conclusion that the attempted murder victim suffered severe bodily injury. This court has recently held that where the trial court finds that there is no severe bodily injury, the imposition of consecutive sentences pursuant to section 5-8-4(a) of the Code is void because it is not authorized by statute. *People v. Johnson*, 2011 IL App (1st) 092817, ¶¶89-91. We observe, however, that the supreme court has held that the question of whether there was severe bodily injury for purposes of consecutive sentencing is a question for the trier of fact (see *e.g.*, *People v. Deleon*, 227 Ill. 2d 322, 332 (2008)), and, as noted above, where the court imposes an excessive sentence because of a mistake of fact or law, the sentence is merely voidable (*Brown*, 225 Ill. 2d at 205).

¶ 18 Here, there is no question that the trial court had personal and subject matter jurisdiction in this case, and that defendant was subject to consecutive sentencing provided that the attempted murder victim suffered severe bodily injury. The trial court imposed consecutive sentences without specifically stating its reasons therefor, and defendant raised no objection in his post-sentencing motion, on appeal, where he raised a sentencing issue, or in his post-conviction petition.

¶ 19 To avoid the consequences of his waiver, defendant claims that the sentence is void. Although defendant argues that the imposition of consecutive sentences was not supported by the evidence, and was thus, in error, any error in the factual determination made by the court renders the judgment voidable, not void. *People v. Welch*, 392 Ill. App. 3d 948, 954 (2009). As such,

defendant's section 2-1401 petition was subject to the limitations period under 2-1401(c) and because he failed to timely file his section 2-1401 petition or provide any grounds to excuse the untimeliness of his petition, we honor the procedural default of his sentencing claim. *Brown*, 225 Ill. 2d at 206-07; *People v. Mescall*, 379 Ill. App. 3d 670, 677-79 (2008).

¶ 20 In reaching this conclusion, we have considered *Johnson*, *People v. Arna*, 168 Ill. 2d 107 (1995), and *Rodriguez*, cited by defendant in support of his contention that the consecutive sentences imposed against him were entered without jurisdiction and thus void. We find, however, that the cases do not support his argument and are distinguishable from this case.

¶ 21 In *Johnson*, ¶90, this court stated that the question of the propriety of defendant's sentence depended on the trial court's determination that defendant inflicted severe bodily injury, then, on remand from codefendant's appeal, the trial court found that the same victims did not suffer severe bodily injury. Based on this factual determination, this court concluded that the trial court was without authority to impose consecutive sentences, and thus, the consecutive sentence was void. *Johnson*, ¶91. Here, by contrast, there was no comparable finding, and defendant claimed that the sentence is void where the trial court "*erroneously concludes that the facts support*" the consecutive sentence. (Emphasis added.) This, however, is an attack on the facts relied upon by the court in imposing the sentence, and a mistake of fact is a voidable issue (*Brown*, 225 Ill. 2d at 205), not subject to collateral attack (*Davis*, 156 Ill. 2d at 155-56).

¶ 22 In *Arna*, the trial court imposed concurrent sentences, and the supreme court briefly held that where "[e]ach of the requirements for mandatory consecutive sentenc[ing] was met," the imposition of concurrent, opposed to consecutive sentences was void. *Arna*, 168 Ill. 2d at 112-13. *Arna* did not delve into the issue defendant has presented to this court on appeal from the *sua sponte* dismissal of his section 2-1401 petition, namely, whether the facts supported the

court's imposition of consecutive sentences based on severe bodily injury (730 ILCS 5/5-8-4(a) (West 1996)).

¶ 23 In *Rodriguez* the reviewing court determined that the trial court lacked the power to impose a criminal conviction and sentence when the Juvenile Court Act of 1987 (705 ILCS 405/5-4(7)(a) (West 1992)) required a juvenile adjudication and punishment, rendering the adult conviction and sentence void. *Rodriguez*, 355 Ill. App. 3d at 293-96 (applying retroactively prior Second District decision defining public way to not include gas station parking lot, and as such, the offender could not be tried as an adult). This was clearly a jurisdictional issue, *i.e.*, whether the court had the power to impose a judgment against the juvenile (*Rodriguez*, 355 Ill. App. 3d at 296), which is not before this court.

¶ 24 In light of the foregoing, we affirm the order of the circuit court of Cook County.

¶ 25 Affirmed.