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FIRST DIVISION
FILED: NOVEMBER 28, 2012

No. 1-11-0063

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 86 CR 16691
)	
MICHAEL BOYD,)	Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 Held: The trial court did not err in dismissing the defendant's petition for relief from judgment, because the sentences imposed against him are not void.

¶ 2 The defendant, Michael Boyd, appeals from the circuit court order granting the State's motion to dismiss his petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)). On appeal, the defendant argues that the circuit court erred in dismissing his petition, because his criminal sentences are void. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 In 1989, the defendant was convicted of first degree murder and of armed robbery for his involvement in a tavern robbery that led to the fatal shooting of the tavern owner. The defendant was

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sentenced to consecutive sentences of 40 years' imprisonment on the murder charge and 25 years on the armed robbery charge. On appeal, we affirmed his convictions and sentences. *People v. Boyd*, No. 1-89-2696 (1992) (unpublished order under Supreme Court Rule 23). We later affirmed the summary dismissal of a petition the defendant filed pursuant to the Post Conviction Hearing Act (725 ILCS 5/122/1 et seq. (West 2000)), as well as the dismissal of a successive post conviction petition. See *People v. Boyd*, No. 1-00-3921 (2002) (unpublished order under Supreme Court Rule 23); *People v. Boyd*, No. 1-04-2276 (2005) (unpublished order under Supreme Court Rule 23). During this time, the defendant also filed two additional petitions for relief from his convictions and sentences, but the denials of those petitions apparently were not appealed.

¶ 4 In June 2010, the defendant filed another collateral attack on his convictions and sentences, this time pursuant to section 2-1401 of the Code. In his 2-1401 petition, he argued that his consecutive sentences are void. The State filed a motion to dismiss the petition, and the circuit court granted the motion to dismiss. The defendant now appeals.

¶ 5 On appeal, the defendant argues that the circuit court erred in dismissing his 2-1401 petition, because his consecutive sentences are void. Section 2-1401 of the Code of Civil procedure provides a statutory procedure by which final orders and judgments may be challenged more than 30 days after their entry. *People v. Pinkonsly*, 207 Ill. 2d 555, 562, 802 N.E.2d 236 (2003). To obtain relief under section 2-1401, a defendant must affirmatively set forth specific factual allegations to establish (1) the existence of a meritorious defense or claim, (2) due diligence in presenting the defense or claim to the circuit court in the original action, and (3) due diligence in filing the 2-1401 petition itself. *Pinkonsly*, 207 Ill. 2d at 565. The defendant argues that his 2-1401 petition presents a meritorious claim because it establishes that his sentences are void, and he argues that a void sentence may be attacked at any time, regardless of the normal time and diligence limitations. See *People v. Harvey*, 196 Ill. 2d 444, 447, 753 N.E.2d 293 (2001) ("A person may also seek relief beyond section 2-1401's [normal two-year limitations period] where the judgment being challenged is void.")

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¶ 6 The defendant asserts that his consecutive sentences are void because they are not authorized by statute. In support, he refers us to the statute governing consecutive sentences at the time of his offense. See Ill. Rev. Stat. 1986, ch. 38, par. 1005-8-4(a). That statute provided for consecutive sentences as follows:

"(a) When multiple sentences of imprisonment are imposed on a defendant at the same time, *** the sentence shall run concurrently or consecutively as determined by the court. *** 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 the defendant inflicted severe bodily injury ***." Ill. Rev. Stat. 1986, ch. 38, par. 1005-8-4(a).

The defendant argues that his murder and armed robbery convictions are based on actions committed as part of a single course of conduct, and he thus argues that consecutive sentences were inappropriate. However, the above statute nonetheless allows consecutive sentences where one of the defendant's convictions is based on a Class X or Class 1 felony and where the defendant inflicted severe bodily injury.

¶ 7 The defendant concedes that armed robbery was a class X felony when he committed it, and he cannot dispute that the murder that took place during the armed robbery constituted a "severe bodily injury." Instead, he argues that we should declare his armed robbery conviction to be void, because the State failed to prove him guilty beyond a reasonable doubt of the offense.

¶ 8 We decline the defendant's invitation to reexamine the sufficiency of the State's evidence at trial. The defendant frames his sufficiency-of-the-evidence challenge as a voidness argument. However, a judgment is considered void under Illinois law only where the court that entered it lacked jurisdictional authority or was induced by fraud. *People v. Madej*, 193 Ill. 2d 395, 401, 739 N.E.2d 423 (2000) ("This court has explained that an order is void if it was entered by a court that lacked jurisdiction of the parties or of the subject matter or that lacked the inherent power to make or enter

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the particular order involved"); *In re Adoption of E.L.*, 315 Ill. App. 3d 137, 154, 733 N.E.2d 846 (2000) (discussing judgments procured by fraud). A conviction based on insufficient evidence may offend due process (see *In re Winship*, 397 U.S. 358, 364 (1970)), but it does not cause a jurisdictional infirmity. Thus, Illinois courts have long rejected sufficiency-of-the-evidence challenges in the context of postconviction proceedings (*People v. Jackson*, 161 Ill. App. 3d 573, 583, 515 N.E.2d 219 n.1 (1987)), despite the fact that such proceedings otherwise allow defendants to attack void judgments (see *People v. Rockman*, 2012 IL App (1st) 102729, ¶ 8 (noting that a void order may be attacked at any time either collaterally or directly)). Accordingly, even if the defendant were correct that the State presented insufficient evidence to convict him of armed robbery at his original trial, he would provide us no grounds to declare his armed robbery conviction void. Because his armed robbery conviction is not void, his consecutive sentences—based on his commission of a Class X offense and his causing severe bodily harm to a victim—comply with the sentencing statute. As a result, we conclude that the defendant's sentences are not void, and we reject his argument that the circuit court erred in dismissing his petition for relief.

¶ 9 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 10 Affirmed.