

probation was terminated as unsuccessful following his conviction in a Macon County felony case for aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 1998)).

¶ 5 Approximately 10 years later, in May 2010, defendant filed a *pro se* "verified petition for post-conviction relief coram nobis-*nunc pro tunc*," claiming the trial court had failed to advise him that his state-court conviction could be used against him in sentencing in federal court. He sought to withdraw his guilty plea. Apparently, defendant was charged with a federal offense in October 2008 and was sentenced to an enhanced term due to his conviction in this case.

¶ 6 In May 2011, the trial court entered an order on his petition, characterizing it as a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). Because the petition was filed more than two years after the entry of the judgment, and defendant failed to assert any reason for the untimeliness, the court summarily dismissed defendant's petition.

¶ 7 Defendant filed a timely notice of appeal with the trial court and the court appointed OSAD to serve as his attorney. On April 17, 2012, OSAD moved to withdraw as appellate counsel, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by June 18, 2012. Defendant has done so and the State has filed an appellee's brief. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the court's judgment.

¶ 8 II. ANALYSIS

¶ 9 OSAD argues defendant's petition presents no meritorious issues. Specifically, OSAD asserts defendant's section 2-1401 petition was untimely filed and defendant did not provide

legal grounds justifying the late filing. Defendant's petition was filed approximately 10 years after his probation was terminated without allegations he was prevented from timely filing due to legal disability, duress, or fraudulent concealment. OSAD claims the trial court properly dismissed the petition as untimely. We agree.

¶ 10 OSAD also claims the trial court had no duty to admonish defendant, as he claimed in his petition, that, should he commit criminal acts in the future, his conviction could be used to enhance future sentences. OSAD asserts the trial court was required to admonish defendant of the direct consequences of his guilty plea, and not to warn him of the possible effect on future criminal liability. See *People v. Williams*, 188 Ill. 2d 365, 373 (1999). We again agree.

¶ 11 Section 2-1401 allows for relief from final judgments more than 30 days after their entry. 735 ILCS 5/2-1401(a) (West 2010). A section 2-1401 petition "must be filed not later than 2 years after the entry of the order or judgment." 735 ILCS 5/2-1401(c) (West 2010). Relief under section 2-1401 is predicated upon proof, by a preponderance of evidence, of a defense or claim that would have precluded entry of the judgment in the original action, and diligence in discovering the defense or claim and presenting the petition. *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007). To be entitled to relief under section 2-1401, the petitioner must set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition. *People v. Bramlett*, 347 Ill. App. 3d 468, 473 (2004).

¶ 12 Based on the above, OSAD correctly asserts there are no meritorious issues that can be presented on appeal. As defendant's petition was both untimely and without merit as a matter of

law, the trial court did not err by dismissing defendant's petition. Defendant's authorities filed in response to OSAD's motion to withdraw as counsel do not convince us otherwise, as he cannot now correct his failure to timely file his section 2-1401 petition, nor has he provided allegations that his untimeliness was legally justified. Further, he cannot demonstrate the trial court had the duty to admonish him regarding the potential consequences in future criminal proceedings of his guilty plea in this case.

¶ 13

III. CONCLUSION

¶ 14 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 15 Affirmed.