

No. 1-11-3406

**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).

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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. 91 MC1 358 415   |
|                                      | ) |                      |
| ANDRZEJ GOLOTA,                      | ) | The Honorable        |
|                                      | ) | Daniel J. Gillespie, |
| Defendant-Appellant.                 | ) | Judge Presiding.     |

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JUSTICE DELORT delivered the judgment of the court.  
Justices Cunningham and Rochford concurred in the judgment.

**ORDER**

¶ 1 **Held:** The trial court lacked jurisdiction to hear defendant's motion to withdraw his guilty plea because it was filed more than 30 days after his guilty plea and sentencing. Defendant's section 2-1401 petition for relief from judgment was also properly dismissed as untimely because it was filed 19 years after his conviction.

¶ 2 In 1992, defendant Andrzej Golota entered a plea of guilty to aggravated assault and unlawful use of a weapon, and was sentenced to two years of supervision. On appeal, defendant contends that the trial court erred when it denied his motion to withdraw his guilty plea because the plea was made and accepted without a proper admonition and because he received ineffective assistance of counsel. He further contends that the trial court erred when it denied his petition for relief from judgment filed

pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)) (the Code), as untimely when the petition was filed within two years of his discovery that he was never charged with the crimes to which he ultimately pled guilty. We affirm.

¶ 3 In March 1992, defendant entered a plea of guilty to aggravated assault and unlawful use of a weapon.<sup>1</sup> A Polish interpreter was present, and, through the interpreter, defendant indicated that he was pleading guilty because he had in fact committed these offenses. Defendant was then sentenced to two years of supervision.

¶ 4 In 2011, defendant filed a motion to withdraw his guilty plea and vacate the judgment alleging that he should be allowed to withdraw his plea because he was not properly admonished pursuant to Supreme Court Rule 605(c) (eff. Jul. 1, 1975), or informed that he may be subject to removal from the United States as a result of the plea. Defendant's amended motion to withdraw alleged, in pertinent part, that the charges to which he entered a plea were "unclear." Defendant then filed a petition for relief from judgment pursuant to section 2-1401 of the Code alleging, *inter alia*, that he was denied due process when the trial court failed to comply with Rule 605(c), and that he was subject to a void judgment based upon defective charging instruments.

¶ 5 The State then filed a motion to dismiss, which the circuit court considered responsive to both of defendant's motions. Ultimately, the court denied defendant's motions as untimely.

¶ 6 Defendant first contends that the circuit court erred by denying the motion to withdraw his plea and vacate the judgment because his guilty plea was made without "an accusation charging a

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<sup>1</sup> Although defendant contends that the common law record indicates that he also entered a plea of guilty to failure to register a firearm, the transcript of defendant's plea hearing indicates that defendant entered a plea to aggravated assault and unauthorized use of a weapon. See *People v. Stingley*, 277 Ill. App. 3d 239, 242 (1995) (when the report of proceedings conflicts with the common law record, the report of proceedings will prevail).

violation of the crime" to which he entered a plea, and because counsel was ineffective.

¶ 7 Illinois Supreme Court Rule 604(d) (eff. Jul. 1, 2006) provides that a defendant seeking to withdraw his guilty plea must file a motion within 30 days of sentencing. When more than 30 days have elapsed since the defendant's sentencing, and the trial court has not extended the limitations period upon proper application by the defendant, the trial court is divested of jurisdiction to entertain a defendant's postplea motion under Rule 604(d). *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40-41 (2011); see also *People v. Flowers*, 208 Ill. 2d 291, 303, 306 (2003) (because the trial court's jurisdiction over the underlying criminal case had "long since lapsed" by the time the defendant filed her request for relief pursuant to Rule 604(d), the court had no authority to address the motion on the merits). Here, defendant entered his guilty plea in 1992, and moved to withdraw that plea in 2011. Accordingly, because more than 30 days had elapsed between the imposition of sentence and the filing of the motion to withdraw and no extension had been granted, the circuit court did not have jurisdiction to entertain defendant's motion to vacate his plea pursuant to Rule 604(d). *Skryd*, 241 Ill. 2d at 40-41. This court, in turn, has no authority to consider the merits of defendant's appeal from the denial of that motion beyond the question of the circuit court's jurisdiction. *Flowers*, 208 Ill. 2d at 307.

¶ 8 With respect to his claim of ineffective assistance of counsel, we note that such claims are commonly brought under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). See, *e.g.*, *People v. Wilk*, 124 Ill. 2d 93, 106-07 (1988). The *Flowers* court observed that the 30-day limitation in Rule 604(d) does not apply to postconviction proceedings. *Flowers*, 208 Ill. 2d at 302. We note, however, that defendant has since served his sentence and likely lacks standing to pursue this claim under the Act. See generally, *People v. Vinokur*, 2011 IL App (1st) 090798, *appeal denied*, No. 113109 (January Term 2012) (Table).

¶ 9 Defendant next contends that his section 2-1401 petition was timely, even though the circuit court found otherwise. Although the charging documents were contained in a public court file for nearly 20 years, he argues that he did not discover that he had entered a plea of guilty to "nonexistent complaints" until December 2010. He further argues that the grounds for relief in this case were fraudulently concealed from him when the State presented him, a non-English speaker, a plea offer that did not involve the crimes of which he was accused. In the alternative, defendant contends that a finding of guilt and imposition of sentence in the absence of an accusation charging a violation of the crime to which he entered a plea of guilty is void.

¶ 10 Section 2-1401 provides a comprehensive, statutory procedure that allows for vacating a final judgment older than 30 days. *People v. Vincent*, 226 Ill. 2d 1, 7 (2007). Petitions in criminal proceedings filed pursuant to section 2-1401 seek to correct factual errors that occurred during the prosecution of a case that were unknown to the defendant and the court at trial which, if known at that time, could have prevented the judgment from being entered. *People v. Harris*, 391 Ill. App. 3d 246, 249 (2009). A party seeking relief from judgment must prove, by a preponderance of the evidence, a defense or claim that would have precluded the entry of judgment in the original action and diligence both in discovering the defense or claim and presenting the petition. *Vincent*, 226 Ill. 2d at 7-8.

¶ 11 The petition must be filed no later than two years following the entry of judgment, excluding the time during which the defendant was under a legal disability or duress or the ground for relief was fraudulently concealed. *People v. Nitz*, 2012 IL App (2d) 091165, ¶ 9. The final judgment in a criminal case is the sentence. *People v. Jake*, 2011 IL App (4th) 090779, ¶ 24. When a section 2-1401 petition is filed more than two years after the judgment was entered, it generally cannot be considered. *People v. Caballero*, 179 Ill. 2d 205, 210 (1997); see also 735 ILCS 5/2-1401(c) (West

2010). This two-year limitation "must be adhered to" absent a clear showing that the defendant was under legal disability or duress or that the grounds for relief were fraudulently concealed. *Caballero*, 179 Ill. 2d at 210-11. However, a defendant may still proceed on a petition for relief from judgment outside the two-year period where the judgment is challenged on voidness grounds. *People v. Moran*, 2012 IL App (1st) 111165, ¶ 13; see also *People v. Raczkowski*, 359 Ill. App. 3d 494, 496-97 (2005) (if the circuit court lacked jurisdiction over the parties or the subject matter or exceeded its statutory power to act, the resulting judgment is void and may be attacked at any time). When the trial court enters either a judgment on the pleadings or a dismissal, that order is subject to *de novo* review. *Vincent*, 226 Ill. 2d at 18.

¶ 12 It is undisputed that defendant filed his petition for relief from judgment 19 years after the entry of final judgment in this case. Accordingly, because the petition was filed more than two years after the entry of judgment, the circuit court correctly dismissed it as untimely. See *Caballero*, 179 Ill. 2d at 210-11.

¶ 13 Defendant argues that his petition was timely because it was filed within two years of December 2010, when he learned of the alleged errors regarding the charging instruments and his plea proceedings. He contends that these errors were fraudulently concealed.

¶ 14 "To make a successful showing of fraudulent concealment, the defendant must 'allege facts demonstrating that his opponent affirmatively attempted to prevent the discovery of the purported grounds for relief and must offer factual allegations demonstrating his good faith and reasonable diligence in trying to uncover such matters before trial or within the limitations period.'" *People v. Coleman*, 206 Ill. 2d 261, 290 (2002), quoting *People v. McLaughlin*, 324 Ill. App. 3d 909, 918 (2001). Here, defendant cannot make such a showing when he offers no facts regarding how the State affirmatively attempted to prevent him from learning about the contents of the public court file

or his plea bargain. Although defendant contends that the State's presentation of a plea offer, in English, constituted fraud, the record reveals that his own defense attorney and a Polish interpreter were present at defendant's plea hearing. Even were this court to accept that defendant did not know the exact contents of the court file due to his lack of English proficiency, he offers no facts alleging that he sought to examine the file within two years of the entry of the judgment. In the absence of any facts alleging that the State affirmatively attempted to prevent him from discovering the contents of the court file (*Coleman*, 206 Ill. 2d at 290), defendant has not made a clear showing that the alleged grounds for relief were fraudulently concealed from him, and the trial court properly denied him relief (*Caballero*, 179 Ill. 2d at 210-11).

¶ 15 Defendant finally contends that his petition was not untimely because a void judgment may be attacked at any time.

¶ 16 A judgment is void only where the court lacked subject matter or personal jurisdiction, or where the court exceeded its statutory power to act. *Raczkowski*, 359 Ill. App. 3d at 497. In Illinois, circuit courts have subject matter jurisdiction over all justiciable matters, and trial courts acquire personal jurisdiction over a defendant when he appears before it. Ill. Const. 1970, art. VI, § 9; *Raczkowski*, 359 Ill. App. 3d at 497. Jurisdiction is not conferred by information or indictment, and a defective charging instrument does not deprive the circuit court of jurisdiction. See *People v. Benitez*, 169 Ill. 2d 245, 256 (1996).

¶ 17 Here, defendant concedes that the trial court had personal and subject matter jurisdiction over him but argues that the lack of a charging document accusing him of violating the laws to which he ultimately pled guilty divested the circuit court of jurisdiction. However, our supreme court has held a defective charging instrument does not deprive the circuit court of jurisdiction, and, consequently, defendant's claim must fail. See *Benitez*, 169 Ill. 2d at 255-56 (the circuit court possessed

jurisdiction even though defendant was never validly charged with a crime). Therefore, because defendant has not established that he was the subject of a void judgment, he cannot overcome the two-year time period in which he could have filed his section 2-1401 petition (*Caballero*, 179 Ill. 2d at 210-11), and the petition was properly denied (*Nitz*, 2012 IL App (2d) 091165, ¶ 9).

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.