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2013 IL App (3d) 120123-U

Order filed August 23, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellee,)	Kankakee County, Illinois,
)	
v.)	Appeal No. 3-12-0123
)	Circuit No. 05-CF-306
)	
BRANDON SHOFFNER,)	Honorable
)	Clark E. Erickson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Defendant's section 2-1401 petition for relief from judgment was properly dismissed as untimely. (2) Defendant was entitled to a \$5 credit against his teen court fine for the time he spent in presentence custody.

¶ 2 Pursuant to a negotiated plea agreement, defendant, Brandon Shoffner, pled guilty to aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2004)) in exchange for a sentence of eight years' imprisonment. Defendant was also ordered to serve three years' mandatory supervised release (MSR) and assessed various fines and fees. Defendant

subsequently challenged his guilty plea by filing a petition for relief from judgment (735 ILCS 5/2-1401 (West 2008)), which the trial court ultimately dismissed as untimely. Defendant appeals, arguing that: (1) his conviction and sentence were void because he was not admonished prior to entering his guilty plea that his eight-year sentence would be followed by a three-year term of MSR; and (2) he is entitled to a \$5-per-day credit toward his fine for the time he spent in custody prior to sentencing. We affirm as modified.

¶ 3 FACTS

¶ 4 On June 3, 2005, defendant was charged by indictment with aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2004)), aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2004)), and aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1)(3)(A) (West 2004)). On February 9, 2006, after the State presented its case to the jury, defendant entered into a negotiated plea of guilty to aggravated battery with a firearm. In exchange, the State dismissed the remaining charges and agreed to an eight-year sentence.

¶ 5 Prior to accepting defendant's plea, the trial court admonished defendant that he had a right to a jury trial and that by pleading guilty, he was giving up his right to testify and to subpoena witnesses. The trial court also admonished defendant as to the nature of the charge and that he faced a sentence of 6 to 30 years' imprisonment. Defendant acknowledged that he understood these admonitions and that no one threatened him or made any promises in order to secure his guilty plea.

¶ 6 The trial court accepted defendant's guilty plea, finding that it was supported by a factual basis. The court then sentenced defendant to eight years' imprisonment. After informing defendant of his appeal rights, the court also informed defendant that he would have to serve

three years of parole along with his sentence. Defendant acknowledged that he understood. Accordingly, defendant was ordered to serve three years' MSR and was also assessed a \$5 teen court charge.

¶ 7 On December 29, 2008, defendant filed a *pro se* petition for relief from judgment, alleging he was coerced into pleading guilty. On January 6, 2009, the trial court *sua sponte* dismissed the petition, and thereafter, denied defendant's motion for reconsideration. On appeal, this court found the dismissal of defendant's petition premature and remanded for further proceedings on the petition. *People v. Shoffner*, No. 3-09-0306 (2011) (unpublished order under Supreme Court Rule 23).

¶ 8 On November 30, 2011, defendant filed a *pro se* supplement to his petition. Defendant alleged that his conviction and sentence were void because, prior to entering his guilty plea, he was not admonished that he would have to serve three years' MSR in addition to the agreed eight-year sentence of imprisonment. Pursuant to *People v. Whitfield*, 217 Ill. 2d 177 (2005), defendant requested that his sentence be reduced by three years because he did not receive the benefit of the bargain of his plea agreement.

¶ 9 On February 9, 2012, the State filed a motion to dismiss defendant's petition as untimely. On February 15, 2012, the trial court granted the motion to dismiss, finding that the petition was untimely because the trial court judgment was not void where defendant was advised of MSR. Defendant appeals.

¶ 10 ANALYSIS

¶ 11 I. MSR

¶ 12 Defendant first argues that the trial court erred in dismissing his petition for relief from

judgment as untimely because his conviction and sentence were void due to the court's failure to admonish defendant of MSR prior to entering his guilty plea. We review dismissal of defendant's section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1 (2007).

¶ 13 Section 2-1401 of the Code of Civil Procedure provides a comprehensive statutory procedure that allows for vacatur of a final judgment older than 30 days. 735 ILCS 5/2-1401 (West 2008). Generally, to obtain relief under this section, defendant must file a petition not later than two years after the entry of the order or judgment. 735 ILCS 5/2-1401(c) (West 2008). In this case, defendant admits that he filed his petition 2 years and 10 months after his conviction. Nevertheless, defendant argues that the two-year limitation period does not apply to him because his judgment is void. See 735 ILCS 5/2-1401(f) (West 2008); *People v. Harvey*, 196 Ill. 2d 444 (2001) (finding that a person may seek relief beyond the usual two-year limitations period where the judgment being challenged is void).

¶ 14 In arguing that his judgment is void, defendant initially asserts that the trial court's failure to admonish him regarding MSR prior to accepting his guilty plea was a violation of his due process rights. See Ill. S. Ct. R. 402(a)(2) (eff. July 1, 1997) (requiring a trial court to admonish a defendant who pleads guilty that MSR will be part of his sentence); *Whitfield*, 217 Ill. 2d 177 (finding that due process is violated when a defendant pleads guilty in exchange for a specific sentence and the trial court fails to advise defendant, prior to accepting his plea, that an MSR term will be added to that sentence). Defendant then asserts that this violation of due process rendered his conviction and sentence void, relying on *People v. Williams*, 188 Ill. 2d 365 (1999), to claim that a guilty plea obtained in violation of due process is void. We disagree with defendant's argument.

¶ 15 Although the trial court did not properly admonish defendant of MSR pursuant to *Whitfield*, such an error did not render defendant's judgment void. A judgment is void if the court entered it without personal or subject matter jurisdiction or if the court lacked the power to render the particular judgment or sentence. *People v. Davis*, 156 Ill. 2d 149 (1993); *People v. Santana*, 401 Ill. App. 3d 663 (2010). By contrast, a voidable judgment is one entered erroneously by a court having jurisdiction and is not subject to collateral attack. *Davis*, 156 Ill. 2d 149.

¶ 16 Here, the trial court had jurisdiction over defendant and the subject matter. See *Davis*, 156 Ill. 2d 149. Additionally, despite the lack of MSR admonitions, the court also had the power to impose defendant's sentence of imprisonment and MSR term, which were authorized by statute. Compare *Santana*, 401 Ill. App. 3d 663 (holding that even if the trial court failed to sufficiently admonish as to MSR, the error did not vitiate the court's power to impose a sentence authorized by statute), with *People v. Arna*, 168 Ill. 2d 107 (1995) (a void sentence is one that does not conform to statutory requirements).

¶ 17 Once a court has acquired jurisdiction, no subsequent error or irregularity will divest the court of jurisdiction. See *Davis*, 156 Ill. 2d 149; *People v. Hubbard*, 2012 IL App (2d) 101158. In the instant case, the trial court's failure to admonish defendant of MSR, although a violation of defendant's due process rights, did not divest the trial court of its jurisdiction. See *Hubbard*, 2012 IL App (2d) 101158 (finding that any mistakes of law and fact in accepting defendant's guilty plea did not result in a void judgment). Furthermore, *Hubbard* found that the statement in *Williams*, 188 Ill. 2d 365, that a due process violation rendered a guilty plea void was *dicta* and was not binding because it contradicted the voidness doctrine set out in *Davis*, 156 Ill. 2d 149.

Hubbard, 2012 IL App (2d) 101158 (stating that a judgment is void only if the court that entered it lacked jurisdiction).

¶ 18 We find that defendant's conviction and sentence were not void; therefore, he was not exempt from section 2-1401's two-year limitations period. Accordingly, defendant's petition for relief from judgment was properly dismissed as untimely.

¶ 19 II. Presentence Custody Credit

¶ 20 Defendant next argues he is entitled to a \$5 credit toward his teen court charge to reflect a \$5-per-day credit for the time he spent in custody prior to sentencing. Although defendant did not raise this issue in the trial court, a monetary credit issue may be raised at any stage. See *People v. Caballero*, 228 Ill. 2d 79 (2008).

¶ 21 Pursuant to section 110-14 of the Code of Criminal Procedure of 1963, a defendant who is assessed a fine is allowed a credit of \$5 for each day spent in custody on a bailable offense for which he did not post bail. 725 ILCS 5/110-14(a) (West 2006). Here, the State concedes that defendant is entitled to a \$5 credit against his fine, and we agree. See 725 ILCS 5/110-14(a) (West 2006); *People v. Graves*, 235 Ill. 2d 244 (2009) (finding that the teen court fee is properly characterized as a fine for credit purposes). Accordingly, we modify the mittimus to reflect a \$5 credit to be applied toward defendant's teen court fine. See 725 ILCS 5/110-14(a) (West 2006).

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we modify the mittimus to reflect a \$5 credit against defendant's \$5 teen court fine. The judgment of the circuit court of Kankakee County is otherwise affirmed.

¶ 24 Affirmed as modified.