

No. 1-12-3357

**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).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County.
	)	
v.	)	No. 90 CR 21478
	)	
MARCUS WILLIAMS,	)	Honorable
	)	Thomas Joseph Hennelly,
Petitioner-Appellant.	)	Judge Presiding.

---

PRESIDING JUSTICE CONNORS delivered the judgment of the court.  
Justices Hoffman and Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's order summarily dismissing defendant's first postconviction petition more than 90 days after it was filed and docketed was not in compliance with the Post-Conviction Hearing Act and is void; the circuit court's order is vacated and the case is remanded for further proceedings pursuant to the Post-Conviction Hearing Act.

¶ 2 Defendant was convicted of two counts of first-degree murder and was sentenced to two concurrent terms of natural life. Defendant appealed and we affirmed his convictions on February 17, 1994. *People v. Williams*, No. 1-91-3463 (1994) (unpublished order under

Supreme Court Rule 23). The Illinois Supreme Court subsequently denied defendant's petition for leave to appeal.

¶ 3 On January 11, 1995, defendant filed his first postconviction petition pursuant to the Post-Conviction Hearing Act (Act). (725 ILCS 5/122-1 *et seq.* (West 1994)). In his petition, defendant asserted seven grounds for relief. On June 29, 1995, the trial court summarily dismissed the petition. Both parties agree that the trial court's summary dismissal was not within 90 days of defendant's postconviction petition being filed and docketed as required by the Act.<sup>1</sup> Defendant filed a notice of appeal on July 25, 1995 and the Cook County public defender's office was appointed to represent him. Subsequently, the public defender filed a motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987).

¶ 4 On January 25, 1996, this court affirmed the summary dismissal of the postconviction petition and granted the public defender's motion to withdraw. *People v. Williams*, No. 1-95-2753 (1996) (unpublished order under Supreme Court Rule 23). In our order, we found no error in the trial court's determination that defendant's petition lacked merit. We also found that the doctrines of *res judicata* and waiver were "applicable to, and dispositive of the majority of the claims raised by defendant here" and that the sufficiency of the evidence was not cognizable under the Act. On January 30, 1998, the supreme court denied defendant's petition for leave to appeal.

¶ 5 Four months later, on April 10, 1998, defendant filed a motion to appoint an investigator, which the trial court denied two weeks later. The defendant filed a notice of appeal from this denial, and the Cook County public defender's office was again appointed to represent him. On

---

<sup>1</sup> When the trial court summarily dismissed the petition on June 29, 1995, it likely mistook a copy of defendant's postconviction petition that was file stamped "June 20 ANS'D" for the original petition which was file stamped January 11, 1995.

July 28, 1999, we granted the public defender's motion to withdraw and affirmed the denial of defendant's motion for an investigator. *People v. Williams*, No. 1-98-4853 (1999) (unpublished order under Supreme Court Rule 23).

¶ 6 Between February 1999 and February 2003, defendant pursued a federal habeas corpus petition. After an evidentiary hearing on the allegation that his trial counsel was ineffective for failing to investigate an exculpatory witness, the district court denied relief. *United States ex rel William-El v. Briley*, No. 99 C0933, 2002 WL 31027966 (Sept. 6, 2002).

¶ 7 On March 15, 2010, defendant filed a "Petition for Leave to File Successive Post-Conviction Petition" wherein he stated that the circuit court erroneously dismissed his first postconviction petition as frivolous or patently without merit more than 90 days after its filing. Because of the error, defendant argued, the first postconviction proceedings "were nullified." He also alleged that his appellate counsel was ineffective for failing to raise several meritorious issues on direct review.

¶ 8 On July 30, 2010, the trial court appointed the Cook County public defender's office to represent defendant on his subsequent postconviction petition. However, in September 2011, defendant was given leave to proceed *pro se*. Between March 2010 and January 2012, the record reveals that multiple versions of another postconviction petition were filed. The final version of defendant's *pro se* second petition for postconviction relief (second petition) was filed on January 13, 2012. In this document, he stated that "the proceedings on his original post-conviction constituted a nullity where the circuit court erroneously denied the P.C. without appointing counsel." Defendant also included several substantive bases for postconviction relief. When the State objected to this filing saying it was a successive instead of an amended petition, the trial court stated whether "we call it successive or amended, I'll allow you to do it."

¶ 9 On May 25, 2012, the State filed a motion to dismiss defendant's second petition arguing that the claims were barred by waiver and *res judicata*. In response to the State's motion, defendant argued that this second petition should stand because, referring to the original postconviction petition, the proceedings on the first petition constituted a "nullity" when the trial court acted "three months after the expiration of the 90-day time period \*\*\*[and] erroneously dismissed the petition at the first stage."

¶ 10 On August 10, 2012, the trial court granted the State's motion to dismiss defendant's second petition. The court found that the second petition was "untimely," that the defendant had not persuaded the court that the delays were not due to his own negligence, and that the doctrines of *res judicata* and waiver applied. Defendant filed a motion to reconsider and vacate the order granting the State's motion to dismiss. In that motion to reconsider, defendant again stated that the proceedings on the first petition were a nullity because the "trial court erroneously denied the [first] petition after the expiration of the 90-day time period and failed to docket the petition for further consideration in accordance with provisions 725 ILCS 5/122-4 thru 5/122-6 of the Act."

¶ 11 On September 28, 2012, the trial court denied defendant's motion to reconsider and vacate the judgment dismissing the second postconviction petition. Defendant timely filed a notice of appeal on October 23, 2012 which we now review.

¶ 12 Defendant's notice of appeal from the denial of his second postconviction petition mentions that the second petition was denied without specifying the "findings of fact and [sic] conclusion of law," but it does not specifically mention the proceedings on the first petition. In defendant's brief on appeal, he argues that the trial court acted without authority in summarily dismissing his first postconviction petition after the statutorily-mandated 90-day period for initial review. He further argues that the trial court's order summarily dismissing his first petition is

void and, because void orders may be attacked at any time or in any court, either directly or collaterally, he can raise the voidness issue in this appeal. Defendant requests that we vacate the trial court's void order on his first petition and order the trial court to redocket his first petition for second stage proceedings in accordance with the Act. (725 ILCS 5/122-2.1(b) (West 1994)).

¶ 13 In opposition, the State argues that a lack of jurisdiction is the only source of a void order and because the trial court maintained jurisdiction over the defendant's first postconviction petition after the ninetieth day, its order is merely voidable and not subject to collateral attack. In support of its position that the trial court still had jurisdiction when it ruled on defendant's first petition, the State explains that circuit courts have subject matter jurisdiction over all justiciable matters, and moreover, circuit courts' jurisdiction is conferred entirely by the state constitution and is only limited by a legislature's power to determine jurisdiction for the area of administrative review. The State further contends that, because defendant's notice of appeal is only limited to the judgment on his second petition, a review of the judgment entered on defendant's first petition is not subject to our review. Lastly, the State argues that defendant already received second-stage review and was appointed counsel for his second petition.

¶ 14 Whether a judgment is void presents a question of law for which the standard of review is *de novo*. *People v. Rodriguez*, 355 Ill. App. 3d 290, 293-94 (2005).

¶ 15 The first reason the State suggests that the trial court's order summarily dismissing defendant's first petition after the 90-day window is merely voidable is that the jurisdiction of the circuit courts does not include the "inherent authority" to render a judgment or impose a sentence. That is, the circuit courts' jurisdiction consists only of subject matter and personal jurisdiction. Because "inherent authority" does not limit circuit courts, the State urges us to find that the trial court maintained jurisdiction when it ruled on defendant's initial petition. If the

State's position prevails, the trial court's order would merely be voidable, and a defendant cannot collaterally attack a voidable order. *People v. Davis*, 156 Ill. 2d 149, 155-56 (1993). Defendant, on the other hand, argues that the trial court no longer had the "inherent authority"—a component of jurisdiction—to render a judgment on the petition after the 90-day deadline. If defendant's position prevails, the trial court's order is void and is subject to collateral attack. *Id.* at 155. We agree with defendant that an order can be void when, although the court has subject matter and personal jurisdiction, the court lacks the power to render the particular judgment. *Davis*, 156 Ill. 2d at 156.

¶ 16 Several recent cases, both postconviction and otherwise, address the inherent authority of a court to render a particular judgment and conclude that without that authority, a court lacks jurisdiction. See *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 379-80 (2005); *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002); *People v. Davis*, 156 Ill. 2d 149, 155 (1993) (acknowledging that "the power to render the particular judgment or sentence is as important an element of jurisdiction as is personal jurisdiction and subject matter jurisdiction" and without such power, such as when a court has exceeded its jurisdiction, the judgment or sentence is void); *People v. Permanian*, 381 Ill. App. 3d 869, 876 (2008) (citing *People v. Davis*, 156 Ill. 2d 149, 155-56 (1993)); *People v. Rodriguez*, 355 Ill. App. 3d 290, 296 (2005) (citing *People v. Davis*, 156 Ill. 2d 149, 155-56 (1993)); *People v. Raczkowski*, 359 Ill. App. 3d 494, 496-97 (2005); *People v. Vasquez*, 307 Ill. App. 3d 670, 673 (1999) (citing *People v. Dauer*, 293 Ill. App. 3d 329, 332 (1997)). In contrast to this list of authorities is *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 531 (2001) in which the supreme court stated that the inherent power argument no longer applies to circuit courts. We decline the State's invitation to ignore the cases that confirm the inherent authority of circuit courts in favor of this civil case. From our

review of pertinent case law and the lack of persuasive cases saying otherwise, we conclude that the trial court lacked the inherent authority to rule on defendant's postconviction petition after the 90-day window.

¶ 17 Having found that the trial court lacked jurisdiction to rule on defendant's petition after the 90-day window, we now turn to the effect of that order.

¶ 18 We begin with the statute itself. Addressing the first stage of the process for adjudication of petitions for postconviction relief, the Act states:

"Within 90 days after the filing and docketing of each petition, the court shall examine such petition and enter an order thereon pursuant to this Section. \*\*\* (2) If the petitioner is sentenced to imprisonment and the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision. Such order of dismissal is a final judgment and shall be served upon the petitioner by certified mail within 10 days of its entry." 725 ILCS 5/122-2.1(a)(1) (West 1994).

Referring to the second stage of postconviction proceedings, the Act further states: "If the petition is not dismissed pursuant to this section, the court shall order the petition to be docketed for further consideration in accordance with Section 122-4 through 122-6." 725 ILCS 5/122-2.1(b) (West 1994). In other words, if the court fails to enter an order dismissing a postconviction petition as frivolous or patently without merit within 90 days, it must docket the petition for second-stage proceedings.

¶ 19 As a preliminary remark on the effect of the trial court's order, we note that courts have found that the 90-day window, or the 30-day window in the prior version of the Act, within which a trial court must address whether a petition is frivolous or patently without merit is

mandatory, not discretionary. *People v. Brooks*, 221 Ill. 2d 381, 388 (2006); *People v. Porter*, 122 Ill. 2d 64, 82-85 (1988); *People v. McCaskill*, 2012 IL App (1st) 110174, ¶ 11; *People v. Vasquez*, 307 Ill. App. 3d 670, 672 (1999).

¶ 20 With this in mind and the analysis that follows, we agree with the courts that have concluded that orders not in compliance with that mandatory provision of the Act are void rather than voidable. *People v. Swamynathan*, 236 Ill. 2d 103, 113 (2010); *People v. Brooks*, 221 Ill. 2d 381, 389-94 (2006) (finding that "docketed" referred to the day on which a petition is entered into a case file and set for hearing, the court concluded that the trial court complied with the time requirement in summarily dismissing the petition within 90 days after it was set for hearing and reversed the appellate court's finding that the order was void); *People v. Porter*, 122 Ill. 2d 64, 82-85 (1988); *People v. Longbrake*, 2013 IL App (4th) 120655, ¶ 13; *People v. Adams*, 338 Ill. App. 3d 471, 473 (2003); *People v. Tarnow*, 249 Ill. App. 3d 797, 801 (1993) (finding that a court's ruling on a postconviction petition just one day after the statutory deadline was void).

¶ 21 The cases supplied by the State to say that the trial court's order is voidable namely, *People v. Davis*, 156 Ill. 2d 149 (1993) and *People v. Permanian*, 381 Ill. App. 3d 869 (2008), are distinguishable.

¶ 22 First, in *Davis*, the supreme court reviewed a decision of the appellate court which, *sua sponte*, held that defendant's conviction for the lesser included offense of possession of cannabis was voidable. *Davis*, 156 Ill. 2d at 157. The supreme court stated that the trial court made an erroneous judgment in convicting the defendant of unlawful possession of cannabis *and* unlawful possession of cannabis with intent to deliver. *Id.* But, that erroneous judgment did not divest the trial court of jurisdiction, making the judgment on possession and possession with intent to deliver merely voidable rather than void. *Id.* Unlike the instant case, there was no mandatory

timeline by which the trial court should have acted in *Davis*. The trial court in *Davis* entered in erroneous order but did not run afoul of a mandatory rule that directs a specific course of action in the case of noncompliance.

¶ 23 Second, our conclusion that the judgment in *Permanian*, was voidable is also distinguishable because we found that there was inconclusive evidence that the trial judge convicted the defendant of the inchoate offense of conspiracy as well as murder and therefore, that the judgment was within the statutory sentencing guidelines. *Permanian*, 381 Ill. App. 3d at 877. Unlike a violation of the 90-day window within which a trial court must address a postconviction petition, *Permanian* was only a potential, not definitive, violation of sentencing guidelines. Such a potential violation does not warrant the same response as the clear violation of the Act that occurred here. Moreover, jurisdiction was found lacking in *Permanian* (381 Ill. App. 3d 869 (2008)) so our review of the merits of the defendant's claims, including our conclusion that the sentence was voidable, can be considered dicta.

¶ 24 Having found that the trial court acted without jurisdiction in dismissing the first petition after the 90-day window and that its order was void, we turn to the State's argument that defendant's appeal is not properly pending because there is no independent jurisdictional basis to attack the allegedly void order.

¶ 25 First, it is a well-settled principle of law that a void order may be attacked at any time or in any court, either directly or collaterally. *Sarkissian*, 201 Ill. 2d at 103. Courts have an independent duty to vacate void orders and may *sua sponte* declare an order void. *People v. Thompson*, 209 Ill. 2d 19, 27 (2004) (citing *Schak v. Blom*, 334 Ill. App. 3d 129, 134 (2002)). Finally, a petition challenging a judgment as void is not subject to the limitations period, *res*

*judicata*, or waiver. *People v. Hiller*, 237 Ill. 2d 539, 546-48 (2010); *People v. Harper*, 345 Ill. App. 3d 276, 285 (2003).

¶ 26 Contrary to the position advanced by the State, relying on *Permanian*, 381 Ill. App. 3d 869 and *People v. Flowers*, 281 Ill. 2d 291 (2003), defendant did not use an "empty vehicle" to challenge the allegedly void judgment.

¶ 27 In *Permanian*, the defendant was convicted of murder and conspiracy to commit murder. He received an extended-term of 75 years in prison, but on direct appeal his case was remanded for the trial court to resentence him to 60 years in prison. *Permanian*, 381 Ill. App. 3d at 872. Six years after being resentenced, the defendant filed a motion for DNA and fingerprint analysis pursuant to section 116-3 of the Code of Criminal Procedure (725 ILCS 5/116-3 (West 2004)), which the trial court denied. *Permanian*, 381 Ill. App. 3d at 870. On appeal, the defendant did not address the denial of the section 116-3 motion, but rather argued for the first time that his original convictions for both the principal offense of murder and the inchoate offense of conspiracy were void. *Id.* We found that we did not have "an independent basis for jurisdiction" to consider the allegations of a void judgment because the defendant's section 116-3 motion was simply an "empty vehicle" which was "being used solely and exclusively for challenging a void judgment." *Id.* at 874.

¶ 28 *Permanian* relied on *Flowers*, 208 Ill. 2d 291, which stands for the proposition that courts cannot consider voidness claims on direct appeal from a guilty plea where a motion to withdraw the plea was not timely filed, divesting the trial court of jurisdiction. In *Flowers*, the defendant directly appealed instead of filing a motion to reconsider or a motion to vacate the guilty plea in the trial court as required by Rule 604(d). Ill. S. Ct. R. 604(d) (eff. Aug. 1, 1992); *Flowers*, 208 Ill. 2d at 307-08. Because of this, the supreme court stated that an attack of an

allegedly void order does not "cloak" the appellate court with jurisdiction. *Id.* at 307. The court then concluded that because the trial court was divested of subject matter jurisdiction at the end of the 30-day timeframe for motions to reconsider, its ruling addressing defendant's untimely postjudgment motion was void and that fact was "fatal to the appellate court's judgment." *Id.*

¶ 29 In both *Permanian* and *Flowers*, the defendants' untimely or improperly filed motions rendered their subsequent appeals improper. Those missteps created jurisdictional impediments to the appellate court's authority to grant relief from the allegedly void orders. Here, there was no such jurisdictional impediment to our initial review. Defendant timely filed a motion to reconsider and timely appealed the denial of his first postconviction petition. See Ill. S. Ct. R. 606 (eff. July 1, 1984). At that time, we had the authority to grant defendant the relief he sought, *sua sponte*. See *Thompson*, 209 Ill. 2d at 27. We affirmed the trial court's dismissal of the first petition and defendant went on to file a second petition, by which he attempted to remedy the void order. Interestingly, if defendant had filed a section 2-1401 petition only challenging the trial court's order as void, instead of a second postconviction petition, that 2-1401 petition would not be subject to the usual two-year statute of limitations. 735 ILCS 5/2-1401 (West 2008); *People v. Harvey*, 196 Ill. 2d 444, 447 (2001) (citations omitted). By including his substantive claims along with the allegation of an allegedly void order, defendant did not destroy his otherwise procedurally proper appeal as the defendants in *Permanian* and *Flowers* did. In the civil context, we have similarly explained that compliance with the rules governing appeals is necessary when attacking a void order. *JoJan Corp v. Brent*, 307 Ill. App. 3d 496, 502-04 (1999). In *JoJan*, 307 Ill. App. 3d 496, we looked to the substance of defendant's motion, styled as a section 2-1401 petition, and said that such a motion was simply a "collateral request for the court to expunge a void order". *Id.* at 502. We went on to say that "instead of originating under

any specific provision of the Code, a motion for relief from a void order or judgment arises from the inherent powers of the court to expunge void acts from its records." (Citations omitted.) *Id.*

¶ 30 We also reject the State's contention that our review is confined to the second petition. We admit that a notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice of appeal. *People v. Smith*, 228 Ill. 2d 95, 104 (2009). Illinois Supreme Court Rule 303(b) (eff. June 4, 2008) requires that a notice of appeal specify the judgment or other orders appealed from. However, a notice will be sufficient when it fairly and adequately specifies the judgment complained of. *Smith*, 228 Ill. 2d at 104-05. In this case, the State must have known that defendant sought to remedy the void order on his first petition since March 2010, when defendant first sought leave to file a successive petition. That petition for leave, his second petition filed in January 2012, and his response to the State's motion to dismiss all included a reference to the trial court's error. Furthermore, the second petition would likely never have been filed but for the trial court's void order. Defendant should not be penalized for measures he took to correct our review of the trial court's void order.

¶ 31 Above all, this court's independent duty to vacate a void order (*Thompson*, 209 Ill. 2d at 27) as well as fairness require that we vacate the void order and remand the case for second-stage proceedings. Defendant attempted to file two, related postconviction petitions in hopes of receiving second-stage proceedings. Defendant should have automatically received second-stage proceedings after the ninetieth day following the filing and docketing of his first petition. After the trial court's void order neither our review of that order nor the trial court's assessment of the second petition uncovered its voidness. It was unnoticed that the trial court had summarily dismissed the petition after the 90-day deadline, and a "court should not knowingly tolerate the continued existence of a void sentence" or, as in this case, a void order. See *Harper*, 345 Ill.

App. 3d at 284. Emphasizing the importance of the Act's 90-day window, we have stated that timeliness by the court is "essential to ensuring a defendant's post-conviction rights are protected" (*People v. Tarnow*, 249 Ill. App. 3d 797, 801 (1993)) and a violation of the Act, in and of itself, is enough to require us to vacate the order of dismissal. See *People v. Dauer*, 293 Ill. App. 3d 329, 330 (1997) (stating that it was reasonable for the circuit court to hold the defendant's petition in abeyance but that no cases permit—for any reason—a delay in the 90-day rule of section 122-2.1(a) of the Act). Now, 18 years after his initial postconviction petition was denied, defendant's only avenue to assert that the initial trial order is void is this court. Defendant should be given second-stage proceedings, exactly what he should have received after the 90-day window closed.

¶ 32 The State finally contends that defendant already received second-stage proceedings because he was appointed counsel on his second petition as required by section 122-4 of the Act. (725 ILCS 5/122-4 (West 2008)). This is no substitute. While the State refers to the court appearances on defendant's second petition as "second stage" because defendant was represented by counsel, the record reveals that the trial court viewed these appearances and filings as a subsequent petition, not second-stage proceedings, stating "you know, there is a different standard for subsequent petitions so I'm going to have to take a look at this and see if you've satisfied it" and "I'll have to review this and make a determination as to whether I'll give you leave to file your subsequent petition." Moreover, the clarity of the Act dictates our response in this appeal. Simply stated, "harmless error analysis is not appropriate if the 90-day deadline is not met" because the "overarching, paramount requirement is that the court *must act within 90 days* \*\*\* If the court fails to enter an order dismissing a postconviction petition as frivolous or patently without merit within 90 days, it *must* docket the petition for second-stage proceedings.

(Emphasis in original.) *People v. Longbrake*, 2013 IL App (4th) 120655, ¶¶ 6, 15-16 (rejecting the State's argument that the trial court's improper dismissal of a postconviction petition was harmless error because the defendant was allowed to refile his postconviction petition at a later date).

¶ 33 For the foregoing reasons, we vacate the dismissal of defendant's first postconviction petition and direct the trial court to advance defendant's first postconviction petition for further proceedings pursuant to the Act.

¶ 34 Vacated; remanded.