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2014 IL App (3d) 130145-U

Order filed September 10, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-13-0145
RAY DOCKERY,	)	Circuit No. 08-CF-499
Defendant-Appellant.	)	Honorable Kevin R. Galley, Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices McDade and Schmidt concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court's dismissal of defendant's section 2-1401 petition challenging the forfeiture of defendant's bond is affirmed.
- ¶ 2 Defendant was arrested for retail theft; the trial court set bond at \$20,000, with a 10% deposit to apply. Defendant posted the 10% and bonded out of jail. When he failed to appear at a subsequent hearing, the court entered an order of bond forfeiture. Defendant failed to contest the forfeiture within 30 days by appearing or explaining his nonappearance; as a result, the court entered a final judgment of \$20,000 against defendant on January 5, 2009, to which the \$2,000

bond would be applied. On December 26, 2012, defendant filed a motion for return of his bond. The court found it lacked jurisdiction and dismissed the motion. Defendant appeals.

¶ 3

### FACTS

¶ 4

On August 20, 2008, defendant was arrested for retail theft (720 ILCS 5/16A-3(a) (West 2008)) and booked into the Tazewell County jail. The court set bond at \$20,000, requiring a 10% deposit. Defendant initially sought a recognizance bond to attend substance abuse treatment in Springfield. The court denied that request and scheduled a pretrial hearing for October 10, 2008.

¶ 5

On October 5 or October 6, 2008, defendant posted the 10% deposit (\$2,000) and was released on bond. On October 10, 2008, neither defendant nor defense counsel appeared at a pretrial hearing. The cause was continued until October 14. Defendant and counsel appeared on October 14, and the cause was continued until November 14 for a scheduling conference. Defendant failed to appear for the November 14 hearing. Defense counsel stated that defendant had contacted him earlier that week, explaining that he had enrolled in the Springfield treatment program and intended to appear at the November 14 hearing. The State requested that an arrest warrant issue for defendant's failure to appear. The court granted that request and continued the cause to December 1.

¶ 6

On December 1 defendant again failed to appear. Defense counsel stated that he spoke to defendant shortly after the November 14 hearing and informed him that he was required to appear at the December 1 hearing. The court entered a bond forfeiture order pursuant to section 110-7(g) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-7(g) (West 2008)) ("If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited."). The order stated that defendant violated the

conditions of his bond by failing to appear at the December 1 hearing. It ordered a hearing for January 5, 2009, at which defendant was to appear and show cause why a final judgment of bond forfeiture should not be entered against him. The order also issued a warrant against defendant, with bail set at \$35,000. Notice of the December 1 and January 5 hearings was sent to defendant's last known address.

¶ 7 Defendant did not appear at the January 5, 2009, hearing. Defense counsel stated he had heard nothing further from defendant. The court finalized the forfeiture of defendant's 10% bond deposit and entered a judgment for the State against defendant for \$20,000, plus costs. See 725 ILCS 5/110-7(g) (West 2008) ("If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture \*\*\* the court shall enter judgment for the State \*\*\* against the accused for the amount of the bail and costs of the court proceedings[.]").

¶ 8 On April 13, 2012, more than two years after the bond forfeiture judgment, defendant filed a demand for a speedy trial in the retail theft case. The demand explained that defendant was currently incarcerated at the Danville Correctional Center, having been convicted of a Peoria County burglary on March 23, 2009. On October 4, 2012, defendant filed a motion to dismiss the retail theft charge, arguing that 160 days had elapsed since he filed the speedy trial demand. The State conceded, and the court dismissed the retail theft charge on October 9, 2012.

¶ 9 On December 26, 2012, defendant filed a motion for return of his \$2,000 bond deposit. In an affidavit attached to the motion, defendant averred that he had been incarcerated in the Peoria County jail from November 27, 2008, until March 23, 2009, and was therefore unable to attend the December 1, 2008, or January 5, 2009, hearings. In addition, he alleged that Tazewell County jail officials had knowledge of his incarceration on those dates but refused to make

transportation arrangements for him to appear at the hearings.

¶ 10 The court entered an order denying defendant's motion, finding that the court lacked jurisdiction to hear the motion because the judgment of forfeiture was entered on January 5, 2009, more than two years prior to the filing of the motion. In addition, the retail theft case had been dismissed on October 9, 2012, more than 30 days prior to the motion.

¶ 11 Defendant filed a motion to reconsider, arguing that he did not receive notice of the forfeiture order or the dismissal order until December 6, 2012, and therefore any untimeliness of his motion should be excused. The court denied defendant's motion to reconsider.

¶ 12 Defendant appeals, arguing that he was not apprised of the bond forfeiture hearing because notice of the hearing was sent to his last known address, while defendant was incarcerated in the Peoria County jail. Attached to his brief is the sentencing order from his burglary conviction out of Peoria County. The order states that defendant committed the offense of burglary on November 27, 2008, and remained in custody from that date until March 23, 2009, when he was sentenced. We affirm.

¶ 13 ANALYSIS

¶ 14 On appeal defendant argues that, because of his incarceration in Peoria County, he did not receive notice of the bond forfeiture hearing, in violation of his right to due process. As a result he argues that we should consider his motion timely and remand with instructions for the trial court to decide the motion on its merits. The State argues that the trial court correctly determined that it lacked jurisdiction to hear defendant's motion.

¶ 15 After a trial court enters a final judgment, the defendant has 30 days in which to file a posttrial motion or a notice of appeal. If the defendant does not file a posttrial motion or a notice of appeal within 30 days, the trial court loses jurisdiction over the proceeding. *People v. Wilson*,

198 Ill. App. 3d 555 (1990). A bond forfeiture proceeding is a separate civil proceeding from the related criminal proceeding. *People v. Taylor*, 2013 IL App (2d) 110577; *People v. Montaigne*, 86 Ill. App. 3d 220 (1980). In the present case, the trial court entered its final judgment of bond forfeiture on January 5, 2009. Defendant did not file a posttrial motion or a notice of appeal in that proceeding within the subsequent 30 days. The trial court therefore lost jurisdiction over the bond forfeiture proceeding on February 5, 2009.

¶ 16 After a trial court has lost jurisdiction over a proceeding, it must dismiss any filings directed toward that proceeding. However, section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)) authorizes a party to seek relief from a final judgment when brought more than 30 days after the judgment was entered. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95 (2002). In the present case, defendant did not label his petition as a section 2-1401 petition. However, it was in substance a section 2-1401 petition, and we elect to interpret it as such. See *id.*

¶ 17 Generally, to be legally sufficient, a section 2-1401 petition must be filed within two years of the order of judgment, the petitioner must allege a meritorious defense to the original action, and the petitioner must show that the petition was brought with due diligence. 735 ILCS 5/2-1401(b), (c) (West 2012). However, section 2-1401 petitions that challenge a judgment as void need not comply with those three general requirements. *Sarkissian*, 201 Ill. 2d 95. In the present case, defendant challenges the bond forfeiture judgment as void because the court, by not sufficiently notifying defendant of the hearing, lacked personal jurisdiction over defendant. See *id.*

¶ 18 We may affirm the trial court on any grounds apparent from the record. *In re Estate of Funk*, 221 Ill. 2d 30 (2006). We affirm the trial court's decision to dismiss defendant's motion

because defendant received notice of the December 1 hearing sufficient to satisfy the demands of due process; therefore the resulting forfeiture judgment was not void.

¶ 19 Defendant cites *Robinson v. Hanrahan*, 409 U.S. 38 (1972), for the proposition that he was not adequately apprised of the December 1 and January 5 hearings, in violation of his right to due process. *Robinson*, 409 U.S. at 40 (Due process requires " 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' ") (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). In *Robinson*, the defendant was arrested, and the State initiated forfeiture proceedings against his vehicle. Notice of the forfeiture proceeding was sent to the defendant's last known address, despite the fact that the State knew the defendant was in the county jail. The court, relying on the State's knowledge that defendant was incarcerated and therefore not present at his last known address, held that the State's actions were not reasonably calculated to apprise the defendant of the forfeiture proceedings.

¶ 20 *Robinson* is distinguishable from the present case, where there is nothing in the record to establish that the State or the court knew that defendant was in the Peoria County jail when the State sent notice of the December 1, 2008, and January 5, 2009, hearings to defendant's last known address. Defendant makes a bald statement that the court knew his whereabouts, but he does not support that statement with any facts in the record.

¶ 21 Here, defendant had knowledge of the December 1 hearing, but there is nothing in the record to establish that he took any steps to inform the court of his unavailability. Under such circumstances, we cannot say that defendant's due process rights were violated. The State sent notice to defendant's last known address, which met the requirements of due process under these particular facts. The court's judgment of forfeiture against defendant was therefore not void, and

his section 2-1401 petition fails.

¶ 22

#### CONCLUSION

¶ 23

The judgment of the circuit court of Tazewell County is affirmed.

¶ 24

Affirmed.