

NOTICE
Decision filed 07/16/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130529-U

NO. 5-13-0529

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jefferson County.
)	
v.)	No. 97-CF-302
)	
CHARLES BRUCE THOMAS,)	Honorable
)	Barry L. Vaughan,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's dismissal of the defendant's section 2-1401 petition for postjudgment relief is affirmed.

¶ 2 The defendant, Charles Bruce Thomas, filed in the circuit court of Jefferson County a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). He claimed that an order entered by that same court more than 12 years earlier, which dismissed his petition for postconviction relief, was void. The State moved to dismiss the section 2-1401 petition, and the circuit court granted the motion. The defendant now appeals from the dismissal order. Contrary to the defendant's argument to this court, the 12-year-old order that he

attacked in his section 2-1401 petition was not void, and his petition was filed late. Furthermore, the section 2-1401 claim was not supported by affidavit or other showing. Either of these two bases would justify dismissal of the petition. The judgment of the circuit court is affirmed.

¶ 3

BACKGROUND

¶ 4 In 1998, a jury found the defendant guilty of first-degree murder (720 ILCS 5/9-1(a)(1) (West 1996)), and the circuit court sentenced him to imprisonment for 60 years. This court affirmed the judgment of conviction. *People v. Thomas*, No. 5-99-0220 (2000) (unpublished order under Supreme Court Rule 23). Since then, the defendant has kept busy by preparing and filing petitions for postconviction relief or for relief from judgment, and by taking further appeals to this court, none of which has resulted in any relief whatsoever. In this decision, only those aspects of this case that are pertinent to the instant appeal are discussed.

¶ 5 On December 27, 2000, the defendant filed *pro se* a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2000)). He subsequently filed an amended petition and a second amended petition. In the second amended petition, the defendant raised a variety of claims, including a claim that false statements were intentionally included in a complaint seeking a warrant for the search of the defendant's residence. The State filed a motion to dismiss the second amended petition. On April 7, 2003, the circuit court held a hearing on the State's motion to dismiss, and heard arguments from both parties. The court found that the defendant "failed in [his] burden to present sufficient evidence to warrant an evidentiary hearing on

this matter." In regard to the search warrant complaint, the court remarked that "[t]here is nothing that indicates any type of an intentional misrepresentation or even reckless conduct on the part of the officers in the Complaint for Search Warrant." The court dismissed with prejudice the defendant's second amended petition for postconviction relief.

¶ 6 The defendant appealed from that dismissal order, arguing to this court that he had borne his burden of making a substantial showing of a constitutional violation. This court disagreed with the defendant's argument and affirmed the April 7, 2003, order dismissing the second amended postconviction petition. *People v. Thomas*, No. 5-03-0256 (2004) (unpublished order under Supreme Court Rule 23).

¶ 7 On May 7, 2013, the defendant filed *pro se* a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). This petition is the subject of this appeal. The defendant's sole claim was that the circuit court's April 7, 2003, order dismissing his second amended postconviction petition was a void order because "the circuit court lacked jurisdiction, in that the court exceeded its [*sic*] authority by engaging in fact-finding and credibility determination [*sic*] at the motion to dismiss hearing." Accompanying the section 2-1401 petition—and apparently intended as support for the defendant's claim—were three pages of transcript from the April 7, 2003, hearing, wherein the court announced and explained its order granting the State's motion to dismiss the second amended postconviction petition. On June 6, 2013, the State filed a motion to dismiss the defendant's petition on the ground that it was untimely. The State asserted that the petition was filed beyond the statutory

two-year limitation period, and that no exception to the two-year period applied in this case.

¶ 8 On June 18, 2013, Judge Weber granted the State's motion and dismissed the defendant's section 2-1401 petition as untimely. The defendant filed a motion for rehearing. On July 15, 2013, Judge Weber denied the motion for rehearing. However, on July 31, 2013, Judge Weber vacated her two previous orders and recused herself from the case. On August 1, 2013, the circuit clerk received and file-stamped the defendant's notice of appeal from Judge Weber's orders of June 18 and July 15, 2013. On August 13, 2013, Judge Vaughan noted Judge Weber's vacatur of her two previous orders, found that the defendant's notice of appeal was premature and void, and dismissed the defendant's section 2-1401 petition as untimely. Now, the defendant appeals from this latter order of dismissal.

¶ 9

ANALYSIS

¶ 10 This appeal is from a judgment dismissing the defendant's section 2-1401 petition for relief from judgment. The dismissal of a section 2-1401 petition is reviewed *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). The judgment may be affirmed on any basis in the record, regardless of whether the circuit court relied upon that basis or whether the circuit court's reasoning was correct. *Rodriguez v. Sheriff's Merit Comm'n of Kane County*, 218 Ill. 2d 342, 357 (2006).

¶ 11 The purpose of a section 2-1401 petition is to bring to the attention of the circuit court facts that, if known at the time of judgment, would have precluded entry of the judgment. *People v. Haynes*, 192 Ill. 2d 437, 463 (2000). The petition must be supported

by "affidavit or other appropriate showing as to matters not of record." 735 ILCS 5/2-1401(b) (West 2012). The court can decide the petition based on the materials before it, "including the record of the prior proceedings." *Vincent*, 226 Ill. 2d at 9. Although section 2-1401 is a civil remedy, it can be used in criminal cases. *Id.* at 8.

¶ 12 A section 2-1401 petition must be filed "not later than 2 years after the entry of the order or judgment" from which relief is sought. 735 ILCS 5/2-1401(c) (West 2012). The two-year limitation period excludes any time during which the petitioner was under legal disability or duress or the ground for relief was fraudulently concealed. 735 ILCS 5/2-1401(c) (West 2012). Also, if a section 2-1401 petition alleges that an order or judgment is void (see 735 ILCS 5/2-1401(f) (West 2012)), the two-year limitation does not apply. "Petitions brought on voidness grounds need not be brought within the two-year time limitation." *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002).

¶ 13 In his section 2-1401 petition, the defendant claimed that the order dismissing his second amended postconviction petition—an order entered more than 12 years before the section 2-1401 petition was filed—was void because it was based on fact-finding and credibility determinations. As support for this claim, the defendant cited the court's remarks at the April 7, 2003, hearing on the State's motion to dismiss the postconviction petition. However, an examination of the entire transcript of the April 7, 2003, hearing does not reveal any indication that the circuit court engaged in fact-finding or credibility determinations when dismissing the postconviction petition. To the contrary, the court simply announced and explained its conclusion that the defendant had failed to present sufficient evidence to warrant an evidentiary hearing on the postconviction petition. See

People v. Coleman, 183 Ill. 2d 366, 381-82 (1998) (at a hearing on the State's motion to dismiss a postconviction petition, the defendant bears the burden of making a substantial showing of a constitutional violation, and his failure to meet this burden will result in dismissal of the petition without an evidentiary hearing). The transcript provided no support for the defendant's section 2-1401 claim, and this lack of support was reason enough to dismiss the section 2-1401 petition.

¶ 14 Even if the circuit court did engage in fact-finding or credibility determinations before dismissing the defendant's second amended postconviction petition, this error would not have rendered the dismissal order void. The court had jurisdiction over the parties and over the subject matter. Dismissing the defendant's petition was certainly within the court's authority. See 725 ILCS 5/122-5 (West 2012). If the dismissal was erroneous because it was based on impermissible fact-finding or credibility determinations, the error could have served as the basis for an appeal from the dismissal order. However, the error would not have vitiated the court's jurisdiction. The court still would have had the authority to enter the dismissal order, and therefore the order would not have been void. Nothing in Illinois law holds (or even hints) contrariwise. Because the order under attack was not void, the section 2-1401 petition needed to be filed within two years after that order's entry. Since the petition was not filed within the two-year limitations period, it was untimely, and the circuit court was right to dismiss it on that basis.

¶ 15 A situation of this type is very different from a case in which the circuit court purports to summarily dismiss a postconviction petition after more than 90 days have

passed since the filing and docketing of the petition. A court's noncompliance with the mandatory 90-day time frame contained in section 122-2.1(a) of the Post-Conviction Hearing Act (725 ILCS 5/122-2.1(a) (West 2012)) does render any summary-dismissal order void. *People v. Porter*, 122 Ill. 2d 64, 86 (1988).

¶ 16 Because the defendant's section 2-1401 petition was unsupported and untimely, its dismissal was not erroneous. The circuit court was clearly correct in dismissing it. Accordingly, the judgment is affirmed.

¶ 17 Affirmed.