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2016 IL App (3d) 150019-U

Order filed September 8, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 9th Judicial Circuit, Fulton County, Illinois,
Respondent-Appellee,	)	
v.	)	Appeal No. 3-15-0019
BRUCE E. WILCOXEN,	)	Circuit No. 81-CF-128
Petitioner-Appellant.	)	Honorable Heidi A. Benson, Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Carter and Holdridge concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court properly denied petitioner's section 2-1401 motion to vacate the trial court's April 27, 1982, judgment finding petitioner a sexually dangerous person.
- ¶ 2 Following a commitment hearing, the trial court entered an order finding petitioner to be a sexually dangerous person on April 29, 1982. On September 30, 2013, petitioner filed a section 2-1401 motion to vacate the trial court's April 27, 1982, judgment on the basis that the judgment was void due to purported procedural deficiencies in the original proceedings. On

January 9, 2015, the trial court denied the section 2-1401 motion to vacate judgment. Petitioner appeals.

¶ 3

### FACTS

¶ 4

On December 21, 1981, the State charged Bruce E. Wilcoxon (petitioner) by information with the offenses of rape and indecent liberties with a child in Fulton County case No. 81-CF-128. The State also filed a separate petition requesting the court to find petitioner a sexually dangerous person (SDP) pursuant to the Sexually Dangerous Persons Act (the Act). Ill. Rev. Stat. 1979, ch. 38, §105-1.01, et. seq. The State's petition listed multiple incidents of sexual misconduct allegedly committed by petitioner, including: the pending criminal charges, forcibly kissing an adult female, an attempt to unsnap an adult female's pants, deviate sexual assault with an underage female, and contributing to the sexual delinquency of an underage female.

¶ 5

In accordance with the Act, the court appointed Dr. Wendell K. Stewart and Dr. John E. Sheen to examine the petitioner to determine whether he was an SDP. In February of 1982, both doctors diagnosed petitioner with antisocial personality disorder and concluded petitioner conformed to the statutory definition of an SDP.

¶ 6

On March 25, 1982, the State sent an offer letter to petitioner's counsel offering to *nolle prosequi* the criminal charges against petitioner if he admitted to the allegations set forth in the SDP petition. Additionally, the offer letter indicated petitioner would be committed to the Illinois Department of Mental Health and Developmental Disabilities for treatment.

¶ 7

On April 27, 1982, the State filed an amended supplemental petition in open court before the court conducted a commitment hearing. During the hearing, the parties informed the court they had agreed to a negotiated admission and disposition. Petitioner stated he read and understood the amended petition, knew what a jury trial was, chose to waive jury trial,

understood the standard of proof in SDP proceedings, understood the statutory definition of an SDP, understood he would be placed under the care of the Director of Corrections in a facility set aside for the care and treatment of sexually dangerous persons until recovery or release by law is mandated, was satisfied with counsel, was not forced to admit allegations, and finally admitted to the allegations set forth in the amended petition.

¶ 8 In exchange for petitioner's admission to the amended petition, the State agreed to *nolle prosequi* the pending criminal charges. Next, while not part of the agreement between the parties, petitioner asked the court to request that the Director of Corrections place defendant in the Chester Mental Health Center rather than in the Department of Corrections at Menard (DOC). The court stated this request could be included in the State's order, but informed petitioner that the court could not dictate placement and did not control the DOC.

¶ 9 In the decades that followed, the court conducted periodic reviews to determine whether petitioner had recovered and was no longer an SDP. One periodic review included a jury trial in November of 2002 where the jury determined petitioner remained an SDP.

¶ 10 On September 30, 2013, petitioner filed a section 2-1401 motion to vacate the trial court's April 27, 1982, judgment, finding petitioner an SDP. 735 ILCS 5/2-1401 (West 2012). Petitioner's motion to vacate stated that at the time of the 1982 admission, petitioner did not understand the nature of the proceedings, alleged his counsel was ineffective, and argued he did not receive the benefit of the plea bargain. Petitioner also alleged the State did not meet their burden of proof during the 1982 commitment proceeding.

¶ 11 The hearing on petitioner's section 2-1401 motion to vacate took place on December 8, 2014. Following the arguments of counsel, after reviewing the pleadings, the case law, the files, and the transcripts, the court informed the parties that the section 2-1401 motion to vacate would

be denied. Regarding petitioner's claim that he was misled concerning the nature of his placement resulting from the negotiated agreement, the court observed that the State's offer letter to petitioner indicated petitioner would be committed to the Illinois Department of Mental Health and Developmental Disabilities rather than the DOC. However, the court found that while the State may have been confused about the placement of the petitioner during the negotiation process, the State's confusion had been sorted out by the time the commitment hearing took place. The court concluded the record of the hearing in 1982 revealed both parties understood the trial court could not dictate the location of petitioner's placement within the DOC.

¶ 12 When ruling on the 2013 section 2-1401 motion to vacate, the court also relied on the record, which documented petitioner's IQ. The court reasoned that while petitioner's IQ was on the lower end of the spectrum, petitioner's IQ was not low enough to qualify as a disability on the cognitive disability scale. The court also referred to the transcript of the testimony of a psychiatrist, Sam Parwatikar. Parwatikar, who testified before the court in a prior hearing conducted in 1990, concluded that petitioner qualified as a functional sex offender with the intellectual capacity to understand and communicate. The court went on to make a determination that "[t]here clearly is a factual basis, and for those reasons, the Court does not find that the procedural defect is such that it would have changed the outcome in any way."

¶ 13 On January 12, 2015, the court memorialized these findings in a written order denying petitioner's section 2-1401 motion to vacate. On June 17, 2015, petitioner's motion for reconsideration was denied. Petitioner appeals.

¶ 14 ANALYSIS

¶ 15 On appeal, petitioner argues the trial court erred by denying his September 30, 2013, section 2-1401 motion to vacate the trial court's April 27, 1982, judgment finding petitioner to

be an SDP. Petitioner argues the 1982 judgment is void because: counsel was ineffective, because counsel failed to address petitioner's purported fitness issues, petitioner was not provided the actual benefit of his plea bargain, and the court did not receive additional evidence as part of the commitment proceeding.

¶ 16 On appeal, the State contends petitioner's section 2-1401 motion to vacate was untimely and alternatively denies the contentions raised in the motion. Petitioner further argues his 2013 section 2-1401 motion to vacate was timely filed because void judgments may be attacked at any time.

¶ 17 First, we turn our attention to the State's contention that petitioner's section 2-1401 motion to vacate was untimely. A trial court's ruling on a section 2-1401 petition requesting relief based on a void judgment shall be reviewed *de novo*. *Protein Partners, LLP v. Lincoln Provision, Inc.*, 407 Ill. App. 3d 709, 716 (2010).

¶ 18 The record reveals that the State did not challenge the timeliness of the section 2-1401 motion to vacate and the trial court denied the motion to vacate on other grounds. However, this court may affirm the trial court's decision on any basis supported by the record, even if not relied on by the trial court. *McGuire v. Ameritech Cellular Corp.*, 314 Ill. App. 3d 83, 85 (2000). Consequently, after careful review, we conclude the trial court's ruling should be affirmed on timeliness grounds.

¶ 19 Section 2-1401 states that a petition for relief from judgment "must be filed not later than 2 years after the entry of the order or judgment." 735 ILCS 5/2-1401(c) (West 2012). Here, petitioner's motion to vacate was filed more than 30 years after the trial court's judgment in 1982. Therefore, we must consider whether the section 2-1401 motion to vacate the judgment

contains allegations that would render the 1982 judgment void and subject to a challenge at any time.

¶ 20 A section 2-1401 challenge alleging a prior judgment may be void “need not be brought within the two-year time limitation.” *McCarthy v. Pointer*, 2013 IL App (1st) 121688, ¶ 12. It is well settled that void orders may be attacked at any time. *In the Interest of E.C.*, 297 Ill. App. 3d 177, 180 (1998). However, judgments entered in civil proceedings may be attacked as void “only where there is a total want of jurisdiction in the court which entered the judgment, either as to the subject matter or as to the parties.” *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174 (1998).

¶ 21 Petitioner relies heavily on the Fifth District’s reasoning in the *Abney* decision, where the appellate court reversed the trial court’s judgment finding Abney an SDP. *People v. Abney*, 90 Ill. App. 2d 235 (1967). In that case, the reviewing court determined the judgment was void because the original proceedings were not conducted in accordance with the Act as the State failed to sustain their burden of proof. *Id.* at 239, 244. The *Abney* court reasoned that during SDP proceedings, trial courts possess a special statutory jurisdiction. *Id.* at 243. Consequently, a judgment can become void when a court fails to rigidly adhere to statutory procedures, even in a case where the trial court has both personal and subject matter jurisdiction. *Id.* at 242.

¶ 22 Recently, our supreme court provided clear guidance that disposes of the issue regarding whether special statutory jurisdiction, as utilized in the *Abney* case, remains a viable theory. Our supreme court in *Castleberry* declared circuit courts as courts of general jurisdiction, who need not look to the statute for their jurisdictional authority. *People v. Castleberry*, 2015 IL 116916 at ¶ 19. The court in *Castleberry* reasoned that the “inherent power” concept of jurisdiction is at

odds with the grant of jurisdiction bestowed upon the circuit courts by the Illinois Constitution. *Castleberry*, 2015 IL 116916, ¶ 18.

¶ 23 Based on the rationale set forth in *Castleberry*, and after careful review of the pleadings, we conclude the alleged irregularities recited in the section 2-1401 motion to vacate, even if true, did not render the 1982 judgment void because petitioner does not claim the trial court lacked personal or subject matter jurisdiction in 1982.

¶ 24 We conclude that petitioner’s section 2-1401 motion is untimely. Therefore, petitioner’s section 2-1401 motion to vacate was properly denied. The circuit court’s judgment is affirmed.

¶ 25 CONCLUSION

¶ 26 The judgment of the circuit court of Fulton County is affirmed.

¶ 27 Affirmed.