2016 IL App (4th) 140562-U

NO. 4-14-0562

FILED
June 6, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
ANTONIO T. PETTIUS,	)	No. 09CF1182
Defendant-Appellant.	)	
	)	Honorable
	)	Holly F. Clemons,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's dismissal of defendant's petition for postjudgment relief but vacated the $200 DNA-collection fee.

¶ 2 In June 2010, defendant, Antonio T. Pettius, entered a guilty plea to the offense of driving on a suspended or revoked license (625 ILCS 5/6-303(a) (West 2008)), and the State agreed to cap its recommendation at 66 months' imprisonment. In August 2010, defendant received a sentence *in absentia* of 66 months' imprisonment. As part of the sentence, the trial court ordered defendant to pay a $200 deoxyribonucleic acid (DNA) collection fee.

¶ 3 In October 2012, defendant filed a petition for postjudgment relief pursuant to section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2012)), asserting the trial court failed to properly admonish him regarding the period of mandatory

supervised release (MSR) and, therefore, his plea was involuntary. In June 2014, the court dismissed defendant's petition as both untimely and meritless.

¶ 4 Defendant appeals, asserting (1) the trial court erred by dismissing his section 2-1401 petition because his plea of guilty was void where the trial court's failure to properly admonish him about the MSR period rendered his plea involuntary, and (2) he was improperly assessed a $200 DNA-collection fee. We affirm the trial court's dismissal of defendant's petition but vacate the $200 DNA-collection fee.

¶ 5 I. BACKGROUND

¶ 6 In July 2009, the State charged defendant by information with driving on a suspended or revoked license, a Class 4 felony. In June 2010, defendant entered a guilty plea, a summary of which follows.

¶ 7 The trial court outlined the charge against defendant, noting he was eligible for an extended term and subject to a mandatory minimum jail sentence of 180 days. The court then stated:

> "That is a [Class 4] felony. It's punishable by a possible term of imprisonment normally of one to three years in the penitentiary up to a $25,000 fine and one year of mandatory supervised release.
>
> As a result of your prior criminal history, you are eligible for a mandatory minimum 180 days of imprisonment. You are also eligible for extended term sentencing in this matter of three to six years in the penitentiary."

¶ 8 Defendant indicated he understood the possible penalties he faced. The trial court also admonished him regarding his right to: (1) a trial, (2) present witnesses, and (3) confront the witnesses against him. Defendant stated he understood those rights and waived them. He also agreed his plea was voluntary.

¶ 9 The trial court then explained the case would proceed to sentencing, where the State would cap its sentencing recommendation at 66 months' imprisonment. Defendant indicated he understood the agreement.

¶ 10 Defendant failed to appear for his August 4, 2010, sentencing hearing, at which time the trial court sentenced defendant *in absentia* to 72 months' imprisonment, to be followed by a 1-year period of MSR. As part of the sentence, the court imposed a DNA-collection fee to be paid if defendant had not previously submitted a DNA sample in another case. Later that month, the court entered an amended order reducing defendant's sentence to 66 months' imprisonment in accordance with the sentencing cap defendant agreed to at the time of his guilty plea.

¶ 11 In November 2010, defendant was arrested on the warrant for his failure to appear. The sentencing judgment forwarded to the Illinois Department of Corrections stated defendant had been sentenced to 66 months' imprisonment, to be followed by a 2-year MSR period. On December 21, 2010, the trial court filed an amended judgment, indicating defendant was to receive only a one-year period of MSR.

¶ 12 On October 26, 2012, defendant filed a petition for postjudgment relief pursuant to section 2-1401 of the Civil Code (735 ILCS 5/2-1401 (West 2012)). Therein, defendant contended his 66-month sentence, followed by a 1-year period of MSR, exceeded (1) the 66-month cap he agreed to during his guilty-plea hearing, and (2) the statutory sentencing range for

a Class 4 felony (730 ILCS 5/5-4.5-45(a) (West 2008)), therefore violating his right to due process. Accordingly, defendant asked the trial court to reduce his sentence in accordance with his guilty plea.

¶ 13 In October 2013, the State filed a motion to dismiss defendant's petition. Pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)), the State asserted defendant's petition failed to state a cause of action and was insufficient as a matter of law. Under section 2-619(a)(5) of the Civil Code (735 ILCS 5/2-619(a)(5) (West 2012)), the State asserted defendant's motion was untimely because it was brought more than two years after the final judgment.

¶ 14 In June 2014, the trial court filed a memorandum opinion and order granting the State's motion to dismiss defendant's petition. The court found defendant's petition was untimely, having been filed more than two years after the entry of final judgment. The court also found defendant's claims were without merit, in part, because (1) the court admonished him as to the penalties, including the MSR period; and (2) defendant received a sentence within the range outlined by the sentencing agreement.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues (1) the trial court erred in dismissing his section 2-1401 petition because his plea of guilty was void where the trial court's failure to properly admonish him about the MSR period rendered his plea involuntary, and (2) he was improperly assessed a $200 DNA-collection fee.

¶ 18 A. Void Judgment

¶ 19 Defendant first asserts his plea was void because the trial court's failure to properly admonish him regarding the period of MSR rendered it involuntary. We review *de novo* the court's dismissal of defendant's section 2-1401 petition requesting relief from a void judgment. *Pekin Insurance Co. v. Campbell*, 2015 IL App (4th) 140955, ¶ 29, 44 N.E.3d 1103.

¶ 20 Generally, section 2-1401 petitions must be filed within two years of the trial court entering its final judgment. 735 ILCS 5/2-1401(c) (West 2012). Defendant concedes his section 2-1401 petition was filed in October 2012, which was more than two years after the trial court entered its August 2010 final judgment. See *People v. Wright*, 337 Ill. App. 3d 759, 762-63, 787 N.E.2d 870, 873 (2003) (final judgment is entered the date that sentence is imposed, not the date a sentencing judgment is corrected). Nevertheless, defendant argues the two-year limitation does not apply to his petition because he alleged the court's sentencing order was void and could be attacked notwithstanding the general two-year limitation. See *People v. Davis*, 156 Ill. 2d 149, 155-56, 619 N.E.2d 750, 754 (1993) (a void order may be attacked at any time). Thus, the central question is whether the trial court's alleged failure to properly admonish defendant resulted in a void order that would excuse him from filing his section 2-1401 petition within the statutory two-year time frame.

¶ 21 A judgment is void only where the trial court lacked jurisdiction to enter the judgment. *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 16, 964 N.E.2d 646. Void judgments are subject to collateral attack and, therefore, can be challenged at any time. *Id*. On the other hand, voidable judgments, which assert an error in a case where the court otherwise has jurisdiction, are not subject to collateral attack. *Davis*, 156 Ill. 2d at 155, 619 N.E.2d at 754.

¶ 22 Defendant argues the trial court's incorrect admonishments rendered his plea involuntary and, therefore, void. In support, defendant relies primarily upon *People v.*

Louderback, 137 Ill. App. 3d 432, 484 N.E.2d 503 (1985). In *Louderback*, this court held the trial court committed reversible error by not permitting the defendant to withdraw his guilty plea after the court improperly admonished the defendant as to the minimum sentence and made no mention of an MSR period. *Id.* at 436, 484 N.E.2d at 505.

¶ 23 However, *Louderback* involved a defendant's direct appeal challenging his guilty plea. *Id*. at 434, 484 N.E.2d at 504. Moreover, unlike in *Louderback*, in this case, defendant was admonished as to the MSR period and received a sentence within the range contemplated by his plea agreement. *Louderback* did not discuss whether an improper admonishment rendered the plea void, which is the question with which we are presented. Defendant's reliance on *People v. Johns*, 229 Ill. App. 3d 740, 744, 593 N.E.2d 594, 597 (1992), is also misplaced. In *Johns*, the trial court was reversed when it imposed, following a violation of probation, a sentence that exceeded the maximum term for which the court originally admonished defendant he was eligible. *Id*. On appeal, the question of whether defendant's original plea was void or voidable was not raised or addressed. Instead, the resolution was grounded in an analysis of the requirement of substantial compliance with Illinois Supreme Court Rule 402 (eff. Feb. 1, 1981).

¶ 24 Defendant further relies on *People v. Williams*, 188 Ill. 2d 365, 370, 721 N.E.2d 539, 543 (1999), for the proposition: "[i]f a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and, therefore, is void." We find defendant's reliance on *Williams* unconvincing. In *Williams*, the supreme court determined the trial court's failure to admonish the defendant that his plea of guilty could be used against him in a later proceeding was a collateral matter that did not render his plea involuntary. *Id.* at 373, 721 N.E.2d at 544. The court was not presented with the issue of whether a plea following an inadequate admonishment was void when it stated, "[i]f a defendant's guilty plea is not voluntary

and knowing, it has been obtained in violation of due process and, therefore, is void." *Id.* at 370, 721 N.E.2d at 543. Such a statement of law is inconsistent with supreme court precedent.

¶ 25 Contrary to defendant's arguments, Illinois courts have held the absence of appropriate admonishments may be erroneous, such as in *Louderback* or *Johns*, but do not render the judgment of a circuit court void. See *People v. Skryd*, 241 Ill. 2d 34, 42, 944 N.E.2d 337, 343 (2011). For example, in *Davis*, 156 Ill. 2d at 153, 619 N.E.2d at 753, the issue before the supreme court was whether the defendant's improper conviction for a lesser-included offense was void and therefore subject to attack at any time. The supreme court held, because the trial court had jurisdiction over the matter, the court's order was voidable rather than void. *Id*. at 157-58, 619 N.E.2d at 755. In several recent cases, the supreme court has repeatedly reinforced that an order is void only where the trial court lacked jurisdiction to enter the order. See *In re M.W.*, 232 Ill. 2d 408, 414, 905 N.E.2d 757, 763 (2009); *People v. Castleberry*, 2015 IL 116916, ¶ 11, 43 N.E.3d 932; *People v. Thompson*, 2015 IL 118151, ¶ 31, 43 N.E.3d 984. None of those cases mention an exception for a situation in which the defendant has entered into an allegedly involuntary plea. We therefore conclude the supreme court's statement in *Williams* that an involuntary plea is void constituted nonbinding *obiter dicta*. *Williams*, 188 Ill. 2d at 370, 721 N.E.2d at 543.

¶ 26 We find further support for our conclusion in *Hubbard*, 2012 IL App (2d) 101158, ¶ 27, 964 N.E.2d 646, where the Second District rejected the defendant's reliance on *Williams*, determining the language, " '[i]f a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and, therefore, is void,' " constituted *obiter dicta* inconsistent with current case law. (Emphasis omitted.) *Id.*

¶ 27 In *Hubbard*, the appellate court resolved a situation analogous to the present case. The defendant in *Hubbard* filed a section 2-1401 petition outside of the two-year time frame, asserting his guilty plea was void because the trial court's inaccurate admonishments rendered his plea involuntary. *Id.* ¶ 6. In affirming the trial court's dismissal of the defendant's untimely petition, the appellate court held the "[v]oluntariness or involuntariness of a guilty plea has no bearing on jurisdiction, so that an involuntary plea cannot render a conviction void." *Id.* ¶ 12. The appellate court reached a similar holding in *People v. Santana*, 401 Ill. App. 3d 663, 666, 931 N.E.2d 273, 278 (2010), where it concluded, "[e]ven if the trial court failed to sufficiently admonish defendant concerning MSR, the error would not vitiate the trial court's power to impose a sentence authorized by statute." Even if we were to find the plea involuntary, such a finding does not strip the trial court of the inherent authority it derives from the Illinois Constitution to hear matters of this nature, as defendant does not argue the trial court lacked personal or subject-matter jurisdiction. Moreover, the sentence imposed was within the statutorily authorized penalty for a Class 4, extended-term-eligible offense; up to six years of imprisonment, followed by a one-year period of MSR. See 730 ILCS 5/5-4.5-45(a), (*l*) (West 2010). Thus, the trial court had the power to render the particular judgment or sentence. See *Hubbard*, 2012 IL App (2d) 101158, ¶ 21, 964 N.E.2d 646 (outlining the elements of the court's jurisdiction).

¶ 28 We therefore reject defendant's claim that his sentence is "void" because the error in this case involved the procedure surrounding the acceptance of his pleas—namely, allegedly improper admonishments—which rendered the court's order *voidable*, but not *void*, as the trial court otherwise had jurisdiction over the case.

¶ 29 During the pendency of this appeal, defendant filed a motion to cite supplemental authority in light of *People v. Smith*, 2016 IL App (1st) 140887. In *Smith*, the First District determined *Castleberry*'s abolishment of the void-sentence rule cannot be retroactively applied. *Id.* ¶ 30. However, because we have determined the sentence in the present case is not void, *Castleberry* and *Smith* are inapplicable.

¶ 30 Because we have concluded the trial court's order was not void so as to excuse defendant's failure to file his section 2-1401 petition within the two-year time frame, the court did not err in dismissing defendant's petition as untimely.

¶ 31 B. DNA-Collection Fee

¶ 32 Defendant also asserts the trial court erred by ordering him to pay a $200 DNA-collection fee. The State concedes this issue, and we accept the State's concession. Our review is *de novo*. *People v. Adair*, 406 Ill. App. 3d 133, 142-43, 940 N.E.2d 292, 301 (2010).

¶ 33 Section 5-4-3(j) of the Uniform Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)) requires a defendant convicted of a felony to submit to DNA indexing and pay a $200 DNA-collection fee. However, the defendant need only submit to DNA testing and pay the requisite fee once, as a person's DNA sequence needs to be entered into the Illinois State Police database only once. See *People v. Marshall*, 242 Ill. 2d 285, 297, 950 N.E.2d 668, 676 (2011).

¶ 34 In this case, the trial court ordered defendant to submit a DNA sample and pay a $200 DNA-collection fee in accordance with section 5-4-3(j) of the Uniform Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)), unless he had previously provided a sample. As the State concedes, defendant had previously supplied a DNA sample in 2003. Accordingly, we vacate the DNA fee ordered in this case. See *People v. Harper*, 387 Ill. App. 3d 240, 244, 900

N.E.2d 381, 384 (2008) (a reviewing court may correct a sentencing judgment at any time without remanding the matter to the trial court).

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, we affirm the trial court's dismissal of defendant's postjudgment petition but vacate the $200 DNA-collection fee. As part of our judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 37 Affirmed in part and vacated in part.