

NOTICE
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2016 IL App (5th) 140164-U

NO. 5-14-0164

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,)	Marion County.
)	
v.)	No. 01-CF-391
)	
STEVEN R. SANDERS,)	Honorable
)	Mark W. Stedelin,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court. Justices Goldenhersh and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed the defendant's petition for relief from judgment as the extended-term sentence imposed on his conviction for attempted first-degree murder is not void.

¶ 2 **FACTS**

¶ 3 In December 2001, the State filed an information charging the defendant, Steven R. Sanders, with one count of attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a) (West 2000)) and one count of residential burglary (720 ILCS 5/19-3(a) (West 2000)). At his first appearance following his arrest, the defendant was advised that attempted

first-degree murder was a Class X felony with a potential sentencing range of six years to natural life. See 720 ILCS 5/8-4(c)(1) (West 2000).

¶ 4 In February 2005, following a bench trial before the Honorable Patrick J. Hitpas, the defendant was found guilty on both counts of the State's information. The evidence adduced at trial established, among other things, that on the night of November 29, 2001, the defendant shot William Williams of Centralia two times in the abdomen with a 9mm pistol. Due to his resulting injuries, Williams had to be hospitalized "for a couple of months or so."

¶ 5 At the defendant's March 2005 sentencing hearing, the State argued that the defendant was eligible for an extended-term sentence pursuant to section 5-5-3.2(b)(11) of the Unified Code of Corrections (730 ILCS 5/5-5-3.2(b)(11) (West 2000)), which has since been recodified as section 5-5-3.2(b)(7). See 730 ILCS 5/5-5-3.2(b)(7) (West 2010); see also Pub. Act 96-1000 (eff. July 2, 2010). That section specifically allows for the imposition of an extended-term sentence

"[w]hen a defendant who was at least 17 years of age at the time of the commission of the offense is convicted of a felony and has been previously adjudicated a delinquent minor under the Juvenile Court Act of 1987 for an act that if committed by an adult would be a Class X or Class 1 felony when the conviction has occurred within 10 years after the previous adjudication, excluding time spent in custody[.]" 730 ILCS 5/5-5-3.2(b)(11) (West 2000); 730 ILCS 5/5-5-3.2(b)(7) (West 2010).

The State noted that in Marion County case number 97-JD-75, the defendant had been adjudicated delinquent of armed robbery, an offense which if committed by an adult, "would have been a Class X felony." See 720 ILCS 5/18-2(b) (West 1996). Referencing the defendant's presentence investigation report (PSI), the State further noted that the defendant was 23 years old, that he had an extensive criminal history, and that he had shown no remorse for the shooting victim in the present case. The defendant's PSI shows that he was sentenced to five years' probation in 97-JD-75. When given the opportunity to state or make any additions or corrections to the PSI, the defendant did not do so.

¶ 6 The trial court agreed that the defendant had an extensive criminal history, that he had shown no remorse for his "conduct in this case," and that his adjudication in 97-JD-75 made him eligible for an extended-term sentence. The court indicated that it had reviewed the court file in 97-JD-75 and was taking "judicial notice of [the] file." The court noted that in July 1998, the defendant had admitted that he had committed the armed robbery charged in 97-JD-75 and had been adjudicated delinquent of the offense. The court further noted that the armed robbery was "a very serious armed robbery" and that the defendant had also been charged with attempted murder in 97-JD-75. The court generally characterized the defendant's PSI as "very unfavorable" and opined that an extended-term sentence was appropriate in light of the defendant's prior criminal history. The trial court ultimately imposed an extended-term 45-year sentence on the defendant's conviction for attempted first-degree murder and a concurrent 20-year sentence on his conviction for residential burglary.

¶ 7 In August 2013, the defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). The defendant's petition raised numerous claims and allegations, one of which was that his extended-term sentence was void because it was imposed in violation of section 111-3(c-5) of the Code of Criminal Procedure of 1963 (section 111-3(c-5)). See Pub. Act 91-953 (eff. Feb. 23, 2001) (adding 725 ILCS 5/111-3(c-5)); see also 725 ILCS 5/111-3(c-5) (West 2002).

¶ 8 In September 2013, the State filed a motion to dismiss the defendant's 2-1401 petition. The State's motion asserted, among other things, that the defendant's petition was untimely because it had been filed more than two years after his conviction and sentence. See 735 ILCS 5/2-1401(c) (West 2012).

¶ 9 In December 2013, finding that the defendant's petition was untimely, the trial court entered an order granting the State's motion to dismiss. The defendant subsequently filed a motion for reconsideration. With respect to his claim that his extended-term sentence was void, the defendant noted that "a sentence which does not conform to statutory requirements is void" and that section 2-1401's two-year limitation period did not apply to void judgments.

¶ 10 In March 2014, the trial court entered an order amending its prior order granting the State's motion to dismiss. Agreeing with the defendant's observation that he could challenge a void sentence at any time (see *People v. Brown*, 225 Ill. 2d 188, 203 (2007)), the court indicated that it was denying the defendant's sentencing claim on its merits. In April 2014, the defendant filed a timely notice of appeal.

¶ 11

ANALYSIS

¶ 12 The dismissal of a 2-1401 petition alleging that a sentencing judgment is void is reviewed *de novo*. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶¶ 47-49; *People v. Vincent*, 226 Ill. 2d 1, 5, 18 (2007). Here, the defendant contends that the extended-term sentence imposed on his attempted first-degree murder conviction is void because the State failed to comply with section 111-3(c-5). In light of our supreme court's recent decision *People v. Jones*, 2016 IL 119391, we disagree and conclude that section 111-3(c-5) was inapplicable under the circumstances.

¶ 13 Section 111-3(c-5) was enacted "in response to the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which held that whenever a fact other than a prior conviction is considered to enhance a penalty beyond the statutory maximum, that fact must be found to exist beyond a reasonable doubt by the trier of fact." *People v. Mimes*, 2014 IL App (1st) 082747-B, ¶ 26. In pertinent part, section 111-3(c-5) states,

"Notwithstanding any other provision of law, in all cases in which the imposition of the death penalty is not a possibility, if an alleged fact (other than the fact of a prior conviction) is not an element of an offense but is sought to be used to increase the range of penalties for the offense beyond the statutory maximum that could otherwise be imposed for the offense, the alleged fact must be included in the charging instrument or otherwise provided to the defendant through a written notification before trial, submitted to a trier of fact as an aggravating factor, and proved beyond a reasonable doubt." 725 ILCS 5/111-3(c-5) (West 2002).

The defendant argues that because a juvenile adjudication is not a "prior conviction" (see *In re Antoine B.*, 2014 IL App (3d) 110467-B, ¶ 8), the fact of his prior adjudication for armed robbery had to be alleged in the State's information, submitted to the trier of fact, and proven beyond a reasonable doubt. Because these procedures were not followed in the present case, the defendant argues that his extended-term sentence is void pursuant to the void-sentence rule. See, e.g., *People v. Thompson*, 209 Ill. 2d 19, 24-25 (2004) (stating that "a sentence which does not conform to a statutory requirement is void" and that if the trial court "lacked the statutory authority to impose an extended-term sentence *** the extended-term portion of that sentence is void"). The defendant acknowledges that in *People v. Castleberry*, 2015 IL 116916, our supreme court abolished the void-sentence rule. He urges us, however, to adopt the reasoning in *People v. Smith*, 2016 IL App (1st) 140887, ¶¶ 27-30, and conclude that *Castleberry* does not apply retroactively to cases that became final prior to its pronouncement.

¶ 14 We note that in *People v. Stafford*, 2016 IL App (4th) 140309, ¶ 33, the court rejected the *Smith* court's conclusion regarding the retroactive applicability of *Castleberry* and that in *People v. Cashaw*, 2016 IL App (4th) 140759, ¶ 34, the court stated that it "explicitly disagree[d] with the holding in *Smith*." We need not weigh in on whether *Smith* was rightfully or wrongly decided, however, because either way, *Jones* is dispositive of the defendant's appeal.

¶ 15 In *Jones*, the court addressed the very issue underlying the defendant's argument in the present case, i.e., "whether [a] defendant's juvenile adjudication, which qualified [him] for an extended-term sentence, falls within *Apprendi*'s prior-conviction exception

and, in turn, the exception in section 111-3(c-5)." *Jones*, 2016 IL 119391, ¶ 15. A narrow majority of the court concluded that it does. *Id.* ¶¶ 33, 42. The majority determined that a prior juvenile adjudication "is the equivalent of a prior conviction under *Apprendi*" and for purposes of section 111-3(c-5). *Id.* ¶ 33. The court thus held that "[t]he State was not required to allege the fact of [the defendant's] juvenile adjudication in the [charging instrument] or prove its existence beyond a reasonable doubt." *Id.* The *Jones* court further held that the trial court had properly relied on the defendant's PSI, the accuracy of which was "not disputed at the sentencing hearing," as conclusively establishing the existence of the defendant's prior adjudication. *Id.* ¶¶ 38, 40.

¶ 16 Here, as in *Jones*, because the defendant's extended-term sentence was based on section 5-5-3.2(b)'s juvenile-adjudication provision, the State was not required to allege the fact of the defendant's adjudication in its charging instrument or prove the adjudication's existence beyond a reasonable doubt. See *id.* ¶¶ 12, 33. We further note that the trial court in the present case did not rely solely on the defendant's PSI as proof of the defendant's adjudication in 97-JD-75. The court also reviewed and took judicial notice of the court file in the case, which was equally proper. See *In re S.M.*, 2015 IL App (3d) 140687, ¶ 20; *People v. White*, 311 Ill. App. 3d 374, 380 (2000); *Nogle v. Nogle*, 53 Ill. App. 2d 457, 459 (1964).

¶ 17

CONCLUSION

¶ 18 For the foregoing reasons, we conclude that the trial court rightfully rejected the defendant's contention that his extended-term sentence is void. Accordingly, the trial court's judgment dismissing the defendant's 2-1401 petition is hereby affirmed.

¶ 19 Affirmed.