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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 10 CR 12763
)	
RAKEEM BURRIS,)	
)	The Honorable
Defendant-Appellee.)	Thomas M. Davy,
)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* On supervisory order and pursuant to our supreme court's recent decision in *People v. Shinaul*, 2017 IL 120162, we affirm the judgment of the circuit court denying the State's motion to reinstate charges that it nol-prossed in exchange for defendant's guilty plea.

¶ 2 We initially dismissed the State's appeal for lack of jurisdiction, relying on the appellate decision in *People v. Shinaul*, 2015 IL App (1st) 140477, ¶ 13, where the First Division of this court reasoned that the denial of the State's motion for reinstatement of charges, which were nol-prossed in exchange for the defendant's guilty plea to the Class 4 version of aggravated unlawful

use of a weapon (AUUW) invalidated by *People v. Aguilar*, 2013 IL 112116, “cannot be recast as a ‘dismissal of an indictment, information, or complaint’ [(*People v. Boyt*, 109 Ill. 2d 403, 411 (1985))] pending before the court.”

¶ 3 On March 29, 2017, the supreme court denied the State’s petition for leave to appeal but entered a supervisory order directing us to vacate our judgment and to consider the effect of its decision in *People v. Shinaul*, 2017 IL 120162, “on the issues of whether (1) this court has jurisdiction to consider the reinstatement of previously nol-prossed counts following a court vacating a conviction based on a guilty plea in exchange for remaining counts being nol-prossed; and (2) if there is jurisdiction, whether the nol-prossed counts can be reinstated.” For the reasons that follow, we conclude that this court has jurisdiction to consider the denial of the State’s motion to reinstate and that the State was not entitled to reinstate charges that were nol-prossed as part of the plea agreement with defendant..

¶ 4 BACKGROUND

¶ 5 Defendant was 17 years old when he was arrested in July 2010 and charged by information with six counts of aggravated unlawful use of a weapon (AUUW) and one count of unlawful possession of a firearm (UPF).

¶ 6 Specifically, count one charged defendant with AUUW for knowingly carrying an uncased, loaded, and immediately accessible firearm outside of his home. 720 ILCS 5/24-1.6(a)(1)/(3)(A) (West 2010). Count two charged defendant with AUUW for knowingly carrying a firearm outside his home when he had not been issued a currently valid Firearm Owner’s Identification (FOID) Card. 720 ILCS 5/24-1.6(a)(1)/(3)(C) (West 2010). Count three charged defendant with AUUW for knowingly carrying a firearm outside his home when he was under the age of 21. 720 ILCS 5/24-1.6(a)(1)/(3)(I) (West 2010). Count four charged the defendant

with AUUW for knowingly carrying a firearm that was uncased, loaded, and immediately accessible when he was on a public street. 20 ILCS 24-1.6(a)(2)/(3)(A) (West 2010). Count five charged defendant with AUUW for knowingly carrying a firearm on a public street when he had not been issued a currently valid FOID card. 720 ILCS 5/24-1.6(a)(2)/(3)(C) (West 2010). Count six charged defendant with AUUW for knowingly carrying a firearm on a public street when he was under the age of 21. 720 ILCS 5/24-1.6(a)(2)/(3)(I) (West 2010). Count seven charged defendant with UPF for possessing a concealable firearm when he was under the age of 18. 720 ILCS 5/24-3.1(a)(1) (West 2010).

¶ 7 On January 24, 2011, defendant pleaded guilty to AUUW under count one of the information. The remaining five counts of AUUW and one count of UPF were nol-prossed. Defendant was sentenced to two years' probation on the same date. The next day, the State filed a petition for violation of probation against defendant when he "violated his court-imposed curfew and committed UUW/Felon."

¶ 8 In June 2011, defendant pleaded guilty to violating the conditions of his probation. The trial court sentenced defendant to three years' imprisonment, followed by one year of mandatory supervised release. The trial court further ordered that the sentence be concurrent with the three-year sentence imposed in case number 11 CR 2912 for unlawful use of a weapon by a felon (UUWF).

¶ 9 In September 2013, the Illinois Supreme Court issued its opinion in *People v. Aguilar*, holding that "the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d) violates the right to keep and bear arms, as guaranteed by the second amendment to the United States Constitution." *Aguilar*, 2013 IL 112116, ¶ 22.

¶ 10 On July 15, 2014, the trial court granted defendant’s section 2-1401 petition (735 ILCS 5/2-1401 (West 2010)) to vacate his Class 4 AUUW conviction in case number 10 CR 12763, the underlying prosecution, and his section 2-1401 petition to vacate his Class 3 UUWF conviction in case number 11 CR 2912, which was predicated upon the prior AUUW conviction. The trial court also denied the State’s motion to reinstate counts two, three, five, and six of the information in the underlying prosecution, and the State’s motion to reconsider that denial on August 19, 2014.

¶ 11 The State appealed and on October 28, 2015, this court, relying on *Shinaul*, 2015 IL App (1st) 140477, dismissed the appeal for lack of jurisdiction. In doing so, we concluded that the State was not entitled to an appeal pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. Dec. 11, 2014) because the trial court did not enter an order or judgment on either July 15, 2014, or August 19, 2014, that had the substantive effect of dismissing any charges against defendant.

¶ 12 On February 17, 2017, the Illinois Supreme Court issued its opinion in *Shinaul*, determining that the appellate court had jurisdiction to consider the State’s appeal from the denial of its motion to reinstate charges, and holding that the criminal statute of limitations, section 3-5 of the Criminal Code of 2012 (Code) (720 ILCS 5/3-5 (2016)), serves as an absolute bar to the State’s motion to reinstate charges that it nol-prossed. *Shinaul*, 2017 IL 120162, ¶¶ 13, 17-18; *People v. Wells*, 2017 IL App (1st) 152758, ¶ 19. Section 3-5(b) of the Code provides that subject to exceptions articulated in subsection (a), the prosecution of a felony must be commenced within three years after the “commission of the offense.” 720 ILCS 5/3-5(b) (West 2016); *People v. Chenoweth*, 2015 IL 116898, ¶ 23.

¶ 13 ANALYSIS

¶ 14 The first question is whether this court has jurisdiction to consider the circuit court's reinstatement of previously nol-prossed counts after vacating a conviction based on a guilty plea in exchange for remaining counts being nol-prossed.

¶ 15 The supreme court in *Shinaul* cited article VI, section 6 of the Illinois Constitution, which confers jurisdiction upon the appellate court to hear all final judgments and appeals from the circuit court. *Shinaul*, 2017 IL 120162, ¶ 7 (citing Ill. Const. 1970, art. VI, § 6). Similarly, this court has jurisdiction to hear the case at hand, conferred upon it by the Illinois Constitution, if the circuit court's judgment qualifies as a final and appealable order.

¶ 16 Because the appellate court has constitutional jurisdiction to hear final and appealable orders, our analysis turns to whether the circuit court's judgment on the defendant's section 2-1401 petition for relief and the State's subsequent motion to reinstate the nol-prossed charges constitutes a final and appealable order. "[A] judgment or order is considered final and appealable if it determines the litigation on the merits such that the only thing remaining is to proceed with execution of the judgment." *Shinaul*, 2017 IL 120162, ¶ 10 (citing *In re Michael D.*, 2015 IL 119178, ¶ 13, and *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 233 (2005)).

¶ 17 Here, as in *Shinaul*, the circuit court granted defendant's section 2-1401 petition to vacate his Class 4 AUUW conviction and guilty plea bargain and denied the State's motion to reinstate the nol-prossed charges. When the circuit court granted defendant's request for relief and then addressed the State's counterattack, "the condition on which the State's motion was triggered, and the merits of the State's motion became pertinent to the outcome of the judgment." *Shinaul*, 2017 IL 120162, ¶ 11. The denial of the State's motion qualified as a final decision in *Shinaul*, as it does here.

¶ 18 Because the circuit court granted defendant’s request for relief and denied the State’s motion, the judgment was appealable. “Once the circuit judge resolved all the pending issues in its written order, the matter terminated—on the merits—between the parties, thereby allowing the State to seek review, as of right, of the circuit court’s ruling.” *Shinaul*, 2017 IL 120162, ¶ 12. If an order merely strikes a complaint or a count of a complaint but grants leave to amend, or dismisses less than all of the parties or issues, it is not an appealable final order. *Shinaul*, 2017 IL 120162, ¶ 12 (citing *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 25). Here, however, the circuit court came to a full conclusion in their decision; the court granted defendant’s section 2-1401 petition to vacate his Class 4 AUUW conviction and denied the State’s motion to reinstate the nol-prossed charges. “ ‘[S]ection 2-1401 of the Code represents a comprehensive statutory procedure authorizing a trial court to vacate or modify a final order or judgment in civil and criminal proceedings.’ ” *People v. Daniels*, 2017 IL App (1st) 142130, ¶10 (quoting *Warren County Soul and Water Conservation District v. Walters*, 2015 IL 117783, ¶ 31). In light of *Shinaul*, this court has jurisdiction to consider the State’s appeal from the circuit court’s final and appealable order denying its motion to reinstate.

¶ 19 Now we turn to the second issue: whether the State is entitled to reinstate the charges that were nol-prossed as part of the plea agreement with defendant. Defendant’s section 2-1401 petition for relief concerned an offense to which he pleaded guilty, an offense which was declared unconstitutional in *Aguilar*, and *void ab initio*—as if he pleaded guilty to something that was never a crime. *People v. Mosley*, 2015 IL 115872, ¶ 55 (holding that subsection (a)(3)(A) of the AUUW statute was void from its beginning).

¶ 20 As noted in *Shinaul*, in order to receive relief from the court, the defendant must file a section 2-1401 petition; this allows the court to vacate the void conviction and the plea bargain,

upon which the conviction is predicated. *Shinaul*, 2017 IL 120162, ¶ 14 (citing *People v. McFadden*, 2016 IL 117424, ¶¶ 20, 31-32 (citing cases where this process was used to vacate convictions based on statutes that were deemed unconstitutional)). Defendant here filed a section 2-1401 petition, following the proper procedure for vacating a void conviction and the underlying guilty plea bargain.

¶ 21 Based on defendant's 2-1401 petition, the circuit court proceeded to grant relief and vacate the plea bargain and void the conviction. "When a circuit court vacates and sets aside a judgment, as it has done here, the prior judgment is eliminated, and the case thereby returns to its status before the judgment was made." *Shinaul*, 2017 IL 120162, ¶ 14 (quoting *People v. Evans*, 174 Ill. 2d 320, 332 (1996)). This process leaves cases in a position where they could potentially require further proceedings. *Shinaul*, 2017 IL 120162, ¶ 14. The supreme court has previously held, "absent any applicable constitutional or statutory limitations which a defendant may raise, the State may request the court to reinstate once nol-prossed charges." *Shinaul*, 2017 IL 120162, ¶ 15 (citing *People v. Hughes*, 2012 IL 112817, ¶ 25). The facts of the case at hand and statute of limitations, like those in *Shinaul*, prevent the reinstatement of the nol-prossed charges.

¶ 22 In *Shinaul*, the supreme court acknowledged that the criminal statute of limitations can be tolled under certain circumstances (see *People v. Coleman*, 206 Ill. 2d 261, 290 (2001) (fraudulent concealment can toll the statute of limitations)), but rejected the State's argument that vacating a conviction after the period of limitations expired warrants the reinstatement of the original charges that were nol-prossed when the parties entered the plea bargain. *Shinaul*, 2017 IL 120162, ¶ 16. The State argued that the statute of limitations should be tolled in perpetuity in order to put the parties in the position they were in before the plea bargain was entered and subsequently vacated. *Shinaul*, 2017 IL 120162, ¶ 16. However, the *Shinaul* court rejected the

State's argument and recognized that the purpose and intent of the statute of limitations overrides any claims of unfairness by the State. *Shinaul*, 2017 IL 120162, ¶ 17. The supreme court also refused to “depart from the plain language and read into the statute exceptions, limitations, or conditions that the legislature did not express.” *Shinaul*, 2017 IL 120162, ¶ 17 (citing *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 15). “As stated, there is no provision in the Code that permits the tolling of the statute of limitations in the circumstances before this court.” *Shinaul*, 2017 IL 120162, ¶ 17. While the statute of limitations may benefit some wrongdoers, the *Shinaul* court declined “to create a prophylactic rule or read into the statute of limitations a nonexistent exception in order to benefit the State.” *Shinaul*, 2017 IL 120162, ¶ 17. Accordingly, in light of *Shinaul*, we conclude that the State was not entitled to reinstate the charges that were nol-prossed as part of the plea agreement with defendant. *Shinaul*, 2017 IL 120162, ¶ 18.

¶ 23

CONCLUSION

¶ 24

For the reasons stated above, we affirm the judgment of the circuit court denying the State's motion to reinstate.

¶ 25

Affirmed.