

2017 IL App (1st) 143127-U

No. 1-14-3127

Order filed August 1, 2017

Second Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 91 CR 16365
)	
MICHAEL CANNON,)	Honorable
)	Neera Lall Walsh,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's petition for relief from judgment was properly dismissed because it was filed more than two years after the complained-of judgment and the challenged judgment was not void.

¶ 2 Defendant Michael Cannon appeals from the dismissal of his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2014)). The section 2-1401 petition challenged, as void, Cannon's 60-year prison sentence because the trial court allegedly failed to comply with section 5-8-7 of the Unified Code

of Corrections (730 ILCS 5/5-8-7 (West 1992)), when the court did not give Cannon credit for certain time spent in custody before his extradition to Illinois. On appeal, Cannon contends that his mittimus must be corrected to reflect an additional 168 days of credit against his sentence. In the alternative, he seeks remand for a hearing to determine the “appropriate” amount of sentence credit for the time he spent in custody in Georgia before his extradition to Illinois.

¶ 3 We affirm. The order Cannon challenges is not a void order under *People v. Castleberry*, 2015 IL 116916, and so the trial court properly denied Cannon relief when his section 2-1401 petition was filed some 22 years after the trial court entered the judgment of conviction against him.

¶ 4 Background

¶ 5 The facts were set forth in this court’s 2012 order affirming the dismissal of Cannon’s *pro se* petition for relief from judgment. There, Cannon contended that his sentence was void as the trial court failed to grant him sentencing credit for the 168 days he spent in custody in Georgia before his extradition to Illinois. See *People v. Cannon*, 2012 IL App (1st) 103681-U. We restate the facts relevant for this appeal.

¶ 6 The record reveals that on January 2, 1991, Cannon shot Vicki McKenzie because he believed that she spoke to police regarding his involvement in an armed robbery. On January 15, 1991, Cannon was arrested in Georgia on a “Fugitive From Justice Warrant.” On July 2, 1991, Cannon was extradited to Illinois.

¶ 7 Following a jury trial, Cannon was found guilty of attempted first degree murder and aggravated battery with a firearm. On July 17, 1992, he was sentenced to an extended-term sentence of 60 years in prison. He was credited with 381 days of presentence custody credit. This

judgment was affirmed on direct appeal. See *People v. Cannon*, No. 1-92-2710 (1994) (unpublished rule under Supreme Court Rule 23). Cannon then filed an unsuccessful petition for postconviction relief. See *People v. Cannon*, No. 1-95-3993 (1998) (unpublished rule under Supreme Court Rule 23).

¶ 8 In August 2010, Cannon filed a *pro se* section 2-1401 petition alleging that his sentence was void because the trial court did not give him sentence credit for the time between January 15, 1991 and June 26, 1991, when he was in custody in Georgia on an Illinois warrant for armed robbery. (The petition listed the wrong date for the extradition. Defendant was extradited to Illinois on July 2, 1991.)

¶ 9 The petition further alleged the armed robbery charge was dismissed and that his convictions for attempted first-degree murder and aggravated battery were based on actions committed before his arrest. Therefore, the trial court's failure to credit him for the days spent in custody in Georgia violated section 5-8-7(c) of the Unified Code of Corrections (730 ILCS 5/5-8-7(c) (West 1992) ("An offender arrested on one charge and prosecuted on another charge for conduct which occurred prior to his arrest shall be given credit on the determinate sentence or maximum term and the minimum term of imprisonment for time spent in custody under the former charge not credited against another sentence.")). The record contains an arrest warrant dated December 5, 1990 and listing the offense of robbery. The trial court dismissed the petition in a written order.

¶ 10 On appeal, this court determined that the record did not "clearly disclose" what charge served as the basis for Cannon's arrest. *People v. Cannon*, 2012 IL App (1st) 103681-U, ¶ 14. The court concluded that because Cannon failed to establish that he "was arrested on an Illinois

warrant which brought him within the purview of section 5-8-7(c) of the [Unified] Code [of Corrections], Cannon failed to establish that the sentencing credit allocation was void or state a legal basis for the relief requested,” and affirmed the dismissal. *Id.* ¶¶ 16-17.

¶ 11 In June 2014, Cannon filed this *pro se* section 2-1401 petition alleging that his sentence was void because of the “trial court’s failure to comply with a statutory guideline,” *i.e.*, section 5-8-7 of the Unified Code of Corrections, and that a challenge to a void sentence may be raised at any time. Specifically, the petition argued that Cannon was entitled to additional credit against his 60-year sentence for time that he spent in custody in Georgia after he was arrested for armed robbery and before extradition to Illinois. Attached to the petition in support were documents indicating that case number 91 CR 18012 was “*nolle prosequi*,” and detailing Cannon’s criminal history.

¶ 12 The trial court denied Cannon relief, noting that Cannon filed the petition in June 2014, more than 22 years after the trial court entered a judgment of conviction against him in July 1992, and that Cannon contended that the petition was not untimely because the judgment was void. The court further noted that despite Cannon’s arguments, the documents attached to the petition did not support his contention that he was entitled to additional sentence credit.

¶ 13 Analysis

¶ 14 Cannon contends that his mittimus must be corrected to reflect an additional 168 days of credit against his sentence, or this case should be remanded for a hearing on the appropriate amount of credit he should receive.

¶ 15 The State responds argues that the doctrine of *res judicata* applies; the petition for relief from judgment raises the same issue as was raised in Cannon’s earlier petition for relief from

judgment, that is, whether Cannon is entitled to an additional 168 days of sentence credit for the time he spent in custody in Georgia before extradition to Illinois. Cannon acknowledges that this petition raises the same issue as his 2010 petition for relief from judgment, but argues new evidence, which was not part of the prior appellate record, provides “the detail” missing in that earlier proceeding, thereby, precluding the use of *res judicata*.

¶ 16 Before addressing the applicability of the doctrine of *res judicata*, however, this court must determine whether the issue is properly before us.

¶ 17 Cannon appeals from the denial of relief in a proceeding under section 2-1401 of the Code. Section 2-1401 of the Code provides a mechanism authorizing a trial court to vacate or modify a final order or judgment in civil and criminal proceedings. *People v. Thompson*, 2015 IL 118151, ¶ 28. A section 2-1401 petition must be filed no earlier than 30 days from entry of the final order but not more than 2 years after entry. 735 ILCS 5/2-1401(a), (c) (West 2014). An exception to the two-year deadline occurs when a petition challenges a void judgment. *Thompson*, 2015 IL 118151, ¶ 29. See also *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002) (two-year time limitation does not apply to petitions brought on grounds of voidness). Unless there has been an evidentiary hearing, this court reviews the dismissal of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007).

¶ 18 In 2014, Cannon filed this petition for relief from judgment arguing that his 1992 sentence was void because the trial court failed to properly calculate his sentence credit and that a void sentence may be challenged at any time. In other words, the petition alleged that the trial court’s alleged failure to comply with section 5-8-7 of the Unified Code of Corrections rendered the sentence imposed on him void. Accordingly, the issue is whether the trial court’s alleged

failure to comply with the statute rendered its sentencing order void, as opposed to merely voidable. See *People v. Brown*, 2016 IL App (2d) 140458, ¶¶ 8-9.

¶ 19 Our supreme court explained in *People v. Castleberry*, 2015 IL 116916, ¶¶ 11-12 that a void judgment is a judgment entered by a court lacking either subject matter jurisdiction or personal jurisdiction. Subject matter jurisdiction involves the court’s power “ ‘to hear and determine cases of the general class to which the proceeding in question belongs.’ ” *Castleberry*, 2015 IL 116916, ¶ 12 (quoting *In re M.W.*, 232 Ill. 2d 408, 415 (2009) quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002)). Personal jurisdiction involves the court’s power “ ‘to bring a person into its adjudicative process.’ ” *Id.* ¶ 12 (quoting *In re M.W.*, 232 Ill. 2d at 415 quoting Black’s Law Dictionary 870 (8th ed. 2004)). In contrast to a void judgment, a voidable judgment “ ‘is one entered erroneously by a court having jurisdiction and is not subject to collateral attack.’ ” *Id.* ¶ 11 (quoting *People v. Davis*, 156 Ill. 2d 149, 155-56 (1993)). In *Castleberry*, the supreme court abolished the “void sentence rule,” which had been recognized as a separate basis for voiding a criminal sentence that did not conform to statutory requirements. *Id.* ¶¶ 13, 19.

¶ 20 Cannon does not challenge the trial court’s personal jurisdiction. See *People v. Woodall*, 333 Ill. App. 3d 1146, 1156 (2002) (“A criminal defendant confers personal jurisdiction upon the trial court when he appears and joins the issues with a plea.”). Rather, he challenges the trial court’s alleged failure to properly calculate his sentence credit in accordance with section 5-8-7 of the Unified Code of Corrections. See 730 ILCS 5/5-8-7(c) (West 1992) (“An offender arrested on one charge and prosecuted on another charge for conduct which occurred prior to his arrest shall be given credit on the determinate sentence or maximum term and the minimum term of

imprisonment for time spent in custody under the former charge not credited against another sentence.”). But, the trial court obtains its subject matter jurisdiction from article VI, section 9, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 9). See also *Castleberry*, 2015 IL 116916, ¶ 18. Because a trial court’s subject matter jurisdiction over criminal cases comes from the constitution, a trial court cannot lose jurisdiction over a criminal case through “ ‘the failure to satisfy a certain statutory requirement or prerequisite.’ ” *Id.* ¶ 15 (quoting *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 30).

¶ 21 Under *Castleberry*, the trial court’s 1992 order sentencing Cannon was not void as the trial court unquestionably had both subject matter jurisdiction and personal jurisdiction. In other words, that court’s alleged failure to properly calculate Cannon’s sentence credit in accordance with a section of the Unified Code of Corrections did not divest the court of jurisdiction such that the resulting judgment would be rendered void. See *Id.* (quoting *LVNV Funding, LLC*, 2015 IL 116129, ¶ 37) (“ ‘the failure to comply with a statutory requirement or prerequisite does not negate the circuit court’s subject matter jurisdiction or constitute a nonwaivable condition precedent to the circuit court’s jurisdiction’ ”). Because the order Cannon challenges is not a void order, the trial court properly denied Cannon relief when his section 2-1401 petition was filed some 22 years after the entry of the complained-of order. See 735 ILCS 5/2-1401(a), (c) (West 2014). See also *People v. McDaniel*, 2016 IL App (2d) 141061, ¶ 4 (post-*Castleberry* there was “no true voidness” as alleged in defendant’s petition; rather there was only voidable fine, which was no longer subject to collateral attack through section 2-1401 petition).

¶ 22 Affirmed.