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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

THE PEOPLE OF THE STATE OF	)	Appeal from the
ILLINOIS,	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	No. 99 CR 13866
v.	)	
	)	Honorable
JOHN REGAN,	)	Geary W. Kull,
	)	Judge, presiding.
Defendant-Appellant.	)	

JUSTICE COBBS delivered the judgment of the court.  
Justices Lavin and Pucinski concurred in the judgment.

**ORDER**

¶ 1       *Held:* Defendant’s convictions were not void where trial judge was subsequently removed from his seat for misrepresenting his residence while seeking election. Trial court properly dismissed defendant’s petition for relief from judgment where the petition was untimely.

¶ 2       Defendant John Regan appeals from the dismissal of his *pro se* 2-1401 petition for relief from judgment. He contends that the circuit court erred in finding that his convictions were not void where the judge who presided over his bench trial lacked the constitutionally and statutorily mandated qualifications to be a judge. We affirm.

¶ 3

## I. BACKGROUND

¶ 4

### A. Initial Proceedings

¶ 5

Defendant was charged, *inter alia*, with counts of aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, aggravated kidnapping, burglary, robbery, and theft. Then-Judge Francis X. Golniewicz presided over defendant's jury trial.

¶ 6

The evidence at trial established that defendant approached a fast food restaurant employee as she was preparing to open the restaurant for the day. He tied the victim's hands, led her to the restaurant's safe, and forced her to open the safe and place about \$1,400 into a bag. Defendant then blindfolded the victim and sexually assaulted her. He fled the restaurant when another employee arrived. Defendant later confessed to the crime after his arrest. His DNA matched DNA found on the victim's body and police officers found about \$1,400 in his residence. The jury found defendant guilty of four counts of aggravated criminal sexual assault, two counts of criminal sexual assault, and one count of aggravated kidnapping, burglary, and robbery. The trial court merged two of the aggravated criminal sexual assault counts and the criminal sexual assault counts into the remaining counts. Following a hearing, Judge Daniel J. Kelley sentenced defendant to an aggregate 75 years' incarceration.

¶ 7

On direct appeal, defendant contended that the evidence was insufficient to support his aggravated kidnapping conviction and that the testimony of a defense expert was erroneously excluded. A panel of this court affirmed defendant's convictions. *People v. Regan*, No. 1-02-2294 (2004) (unpublished order under Supreme Court Rule 23). Defendant subsequently filed a postconviction petition arguing that trial counsel and appellate counsel were ineffective under various theories. Judge Lawrence Terrell summarily dismissed the petition,

and a panel of this court affirmed that dismissal. *People v. Regan*, No. 1-05-2564 (2008) (unpublished order under Supreme Court Rule 23).

¶ 8 B. *In re Golniewicz*, No. 02 CC 1 (Ill. Ct. Comm'n Nov. 15, 2004)

¶ 9 Given the issues raised by defendant, we must briefly relate the relevant facts concerning former-judge Golniewicz, who presided over defendant's trial. In 1991, our supreme court appointed Golniewicz as a judge for the Cook County circuit court and recalled him to the position three times. *In re Golniewicz*, No. 02 CC 1, 2 (Ill. Ct. Comm'n Nov. 15, 2004). Following the final recall order, he was elected as a judge for the tenth subcircuit of the Cook County circuit court in November, 1994. *Id.* He won a county-wide retention election in 2000. *Id.*

¶ 10 On May 15, 2002, the Judicial Inquiry Board filed an amended complaint with the Illinois Courts Commission alleging, among other counts, that Golniewicz had violated constitutional and statutory residence requirements by using his parents' address when running for office, rather than his own personal address outside the tenth subcircuit. *Id.* at 1. The Illinois Courts Commission found, *inter alia*, that Golniewicz had "used deception to get elected" by running in an improper election precinct and removed him from office on November 15, 2004. *Id.* at 31.

¶ 11 C. Section 2-1401 Petition

¶ 12 On January 3, 2013, defendant filed a *pro se* petition seeking to vacate his conviction under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)), which is at issue in the current appeal. In the petition, he argued, *inter alia*, that his convictions were void because Golniewicz was ineligible to be a judge and, consequently, lacked the authority to enter any order in defendant's case. The trial court initially appointed

counsel who filed an amended petition, but defendant subsequently fired that attorney and proceeded on his *pro se* petition. On November 20, 2014, the State filed a motion to dismiss the petition, arguing that Golniewicz acted as a *de facto* judge. The trial court granted the State's motion on November 21, 2014.

¶ 13

## II. ANALYSIS

¶ 14

Defendant contends that his conviction was void *ab initio* because Golniewicz was not qualified to serve as judge under the Illinois Constitution. He argues that he was not tried by a properly-constituted court and his conviction must be vacated and the case remanded for a new trial. The State responds that Golniewicz's removal from the bench does not render his previous orders void; consequently, the trial court properly dismissed defendant's petition as untimely.

¶ 15

Defendant brought his petition pursuant to section 2-1401 of the Code, which allows parties to seek relief from final orders and judgments that are more than 30 days old. 735 ILCS 5/2-1401 (West 2014). We review the dismissal of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). Our review is not limited by the reasoning of the trial court, rather we may affirm based on any basis evident from the record. *People v. Jones*, 2015 IL App (1st) 133123, ¶ 19.

¶ 16

Section 2-1401 petitions must be brought no later than two years after the trial court renders the contested judgment. 735 ILCS 5/2-1401(c) (West 2014). Barring limited exceptions, a petition brought more than two years after judgment will be dismissed as untimely. See *People v. Harvey*, 196 Ill. 2d 444, 447 (2001). One such exception is where the petitioner challenges a void order. See 735 ILCS 5/2-1401(f) (West 2014); *People v. Thompson*, 2015 IL 118151, ¶ 29. Uniquely, a void order may be challenged "at any time,

either directly or collaterally, and the challenge is not subject to forfeiture or other procedural restraints.” *People v. Price*, 2016 IL 118613, ¶ 30 (quoting *People v. Castleberry*, 2015 IL 116916, ¶ 15). Our supreme court has recognized “only three circumstances in which a judgment will be deemed void: (1) where the judgment was entered by a court that lacked personal or subject-matter jurisdiction, (2) where the judgment was based on a statute that is facially unconstitutional and void *ab initio*, and (3) where a judgment of sentence did not conform to a statutory requirement (the void sentence rule).” *Id.* at ¶ 31. The third circumstance, the void judgment rule, was eliminated by the supreme court in *Castleberry* and cannot be applied to defendant’s claim.<sup>1</sup> *Id.* Defendant has not alleged that any of the statutes underlying his convictions are facially unconstitutional, and therefore the second circumstance is not present. Accordingly, defendant’s convictions are only void if the trial court lacked personal or subject-matter jurisdiction.

¶ 17 A criminal defendant confers personal jurisdiction on the trial court when he appears personally before it. *People v. Speed*, 318 Ill. App. 3d 910, 915 (2001). Defense counsel filed an appearance on behalf of defendant and defendant appeared personally before the court. He has tendered no argument that the trial court lacked personal jurisdiction over him. Clearly, personal jurisdiction was established.

¶ 18 Subject matter jurisdiction is a court's power to hear and determine cases of the general class to which the proceeding in question belongs. *People v. Williams*, 2017 IL App (1st) 123357-B, ¶ 17. Jurisdiction belongs to the court itself, and not the individual judge

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<sup>1</sup> We note that defendant, in his appellate brief, argued that *Castleberry* could not be applied retroactively to his petition. However, after defendant filed his brief, the supreme court ruled in *Price* that *Castleberry*’s holding applies to both prospective collateral cases and those “pending in the appellate pipeline at the time *Castleberry* was announced.” See *Price*, 2016 IL 118613, ¶ 27. Accordingly, defendant cannot rely on the invalidated void sentence rule. Moreover, defendant has not alleged that his sentence did not conform to an applicable sentencing statute so it is unclear how the void sentence rule would be relevant even if it were still in existence.

presiding. *People v. Rios*, 2013 IL App (1st) 121072, ¶ 15. Our state constitution confers a trial court's jurisdiction. *People v. Gilmore*, 63 Ill. 2d 23, 26 (1976). “Pursuant to article VI, section 9, of our constitution, the circuit courts have jurisdiction over all justiciable matters. *People v. Raczkowski*, 359 Ill. App. 3d 494, 497 (2005) (citing Ill. Const. 1970, art. VI, § 9). Our supreme court has defined a “justiciable matter” as “a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.” *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334-35 (2002).

¶ 19 A panel of this court recently considered the convictions of a different defendant whose trial was presided over by Golniewicz prior to his removal as judge. See *Rios*, 2013 IL App (1st) 121072. Although that case involved a *habeas corpus* petition, the court faced the same underlying questions of voidness and jurisdiction. See *id.* ¶ 15. Noting that the defendant had been charged and convicted under the Criminal Code of 1961, the appellate court reasoned that the controversy resolved by the defendant’s trial was clearly appropriate for consideration by the trial court, and therefore the trial court had subject-matter jurisdiction. *Id.* ¶ 16. As the trial court also had personal jurisdiction over the defendant, the appellate court held that the defendant’s convictions were not void. *Id.*

¶ 20 As in *Rios*, the criminal charges against defendant were clearly the type of justiciable matter that is appropriate for a trial court to consider. Therefore, it had subject-matter jurisdiction as well as personal jurisdiction and his convictions were not void. As a result, defendant cannot rely on the voidness exception to section 2-1401’s requirement that petitions be brought within two years and his petition was untimely.

¶ 21 Defendant argues that his convictions are void because Golniewicz “fraudulently” held his judicial position. Yet he cites no Illinois cases or statutes that indicate an order is rendered void by the presiding judge’s lack of qualifications. Instead, he relies heavily on *People v. Munson*, 319 Ill. 596 (1925), and *People v. Dunson*, 316 Ill. App. 3d 760 (2000). In *Munson*, our supreme court vacated a criminal conviction on direct appeal, reasoning that the underlying indictment was “void” because the elected, but unlicensed, State’s Attorney had appeared in the grand jury proceedings. *Munson*, 319 Ill. at 596. Relying on *Munson*, the appellate court in *Dunson* held that the defendant’s conviction was void where the prosecutor was not licensed to practice law in Illinois. *Dunson*, 316 Ill. App. 3d at 770. We note initially that both cases are entirely factually dissimilar from the case at bar. Moreover, although both cases indicate that a conviction was void, they reflect an understanding of voidness that is no longer recognized by Illinois courts. The supreme court has clearly articulated that judgments are only void in two instances: “(1) where the judgment was entered by a court that lacked personal or subject-matter jurisdiction, (2) where the judgment was based on a statute that is facially unconstitutional and void *ab initio*.” *People v. Price*, 2016 IL 118613, ¶ 31. We are bound by that holding.

¶ 22 Defendant also cites several cases from other states as well as other authorities for his contention that his convictions are void. We need not, and should not, look to other jurisdictions for guidance where Illinois law is sufficient to resolve the issues raised on appeal. *People v. Qurash*, 2017 IL App (1st) 143412, ¶ 34. Hence, we decline defendant’s invitation to consider the case law of other states.

¶ 23 As we find that defendant’s petition was untimely filed, we need not address the merits of his claims or the State’s counterargument that Golniewicz acted as a *de facto* judge.

¶ 24

### III. CONCLUSION

¶ 25

For the foregoing reasons, we hold that the trial court had jurisdiction during defendant's trial and his convictions were not void. Therefore, defendant's petition was untimely and the court did not err in dismissing it. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 26

Affirmed.