

2017 IL App (1st) 152062-U

No. 1-15-2062

May 18, 2017

Fourth 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the
	) Circuit Court of
Plaintiff-Appellee,	) Cook County.
	)
v.	) No. 03 CR 00135
	)
GILBERTO GONZALEZ,	) Honorable
	) James B. Linn,
Defendant-Appellant.	) Judge, presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Ellis and Justice Burke 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 Gilberto Gonzalez appeals from the dismissal of his *pro se* petition for relief from judgment filed pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)) (the Code). The section 2-1401 petition challenged, as void, the circuit court's previous summary dismissal of defendant's *pro se* postconviction petition. On appeal,

defendant contends that he is entitled to relief under section 2-1401 because the circuit court's summary dismissal of his *pro se* postconviction petition was void when the court orally dismissed the petition rather than issuing a written order. Defendant further contends that the postconviction petition should proceed to "second stage proceedings" because it raised a "gist" of a constitutional claim, *i.e.*, that defendant was denied the effective assistance of trial and appellate counsel. We affirm.

¶ 3 Following a jury trial, defendant was found guilty of first degree murder and of personally discharging a firearm which proximately caused the death of the victim. He was sentenced to 48 years in prison. This judgment was affirmed on appeal. See *People v. Gonzalez*, 388 Ill. App. 3d 566 (2008).

¶ 4 Following that appeal, defendant filed a petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)), alleging that he was denied the effective assistance of trial and appellate counsel. On October 29, 2010, private counsel appeared for defendant before the circuit court. The circuit court summarily dismissed the petition. Counsel then asked the court whether there would be a "written order." The court replied in the negative, stating that what the court "made of record will be in the transcript," and that the transcript "will suffice for a written order." On appeal, this court rejected defendant's claims of ineffective assistance of trial and appellate counsel and affirmed the circuit court's judgment. See *People v. Gonzalez*, 2012 IL App (1st) 103498-U.

¶ 5 In April 2015, defendant filed the pending *pro se* section 2-1401 petition for relief from judgment, alleging that the circuit court's 2010 order summarily dismissing his postconviction petition was void because the circuit court did not enter a "signed written order" within 90 days;

rather, the court dismissed the petition orally. The circuit court dismissed the petition *sua sponte*. Defendant now appeals.

¶ 6 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). The only 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) (the 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).

¶ 7 In the case at bar, defendant filed a petition for relief from judgment in 2015 seeking to vacate the circuit court's October 29, 2010 dismissal of his postconviction petition alleging that the dismissal was void because the court did not enter a written dismissal order. Accordingly, the issue is whether the October 29, 2010 order was actually void, as opposed to merely voidable. See *People v. Brown*, 2016 IL App (2d) 140458, ¶¶ 8-9.

¶ 8 This court has previously held that "a written order of summary dismissal is not required;" rather, "a court summarily dismisses a postconviction petition when its decision is entered of record." *People v. Cooper*, 2015 IL App (1st), 132971 ¶ 14 (citing *People v. Perez*, 2014 IL 115927, ¶¶ 15, 29).

¶ 9 In the case at bar, however, the record on appeal does not contain the complete record from defendant's postconviction proceedings; rather only a transcript from the hearing at which

the circuit court dismissed the postconviction petition is included. The record on appeal does not contain the “half-sheet” or memorandum of orders from that proceeding. Defendant, as the appellant, has the burden to present a sufficiently complete record of the proceedings in the circuit court to support a claim of error. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts arising from the incompleteness of the record will be resolved against defendant. *Id.* at 392. In light of the fact that the record does not contain the half-sheet, we have no basis for disturbing the trial court's judgment. *Id.* at 393. Moreover, even if we were accept defendant's contention on appeal that no written order was entered, defendant cannot challenge the dismissal of his postconviction petition in this collateral proceeding because the complained-of judgment is not void.

¶ 10 In *People v. Castleberry*, 2015 IL 116916, ¶¶ 11-12, our supreme court explained that a void judgment is one entered by a court lacking either subject matter jurisdiction or personal jurisdiction. “Subject matter jurisdiction refers to a 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 refers to the court's power ‘ “to bring a person into its adjudicative process.” ’ ” *Id.* ¶ 12 (quoting *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 court abolished the “void sentence rule,” which had previously been

recognized as a separate basis for voiding a criminal sentence that did not conform to statutory requirements. *Id.* ¶¶ 13, 19.

¶ 11 Here, defendant does not challenge the circuit 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 circuit court’s authority or ability to dismiss his postconviction petition orally rather than in a written order pursuant to section 122-2.1(a)(2) of the Act (see 725 ILCS 5/122-2.1(a)(2) (West 2010) (if “the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision”)). However, the circuit 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 circuit court’s subject matter jurisdiction over criminal cases comes from the constitution, a circuit 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).

¶ 12 Pursuant to *Castleberry*, it is clear that the October 29, 2010 order dismissing defendant’s postconviction petition was not void because the trial court unquestionably had both subject matter jurisdiction and personal jurisdiction. In other words, the circuit court’s failure to comply with a provision of the Act 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' "). Therefore, because the order defendant is challenging is not a void order, the trial court properly denied defendant relief when his section 2-1401 petition was filed more than two 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 the defendant's petition; rather there was only a voidable fine, which was no longer subject to collateral attack through a section 2-1401 petition).

¶ 13 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 14 Affirmed.