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FIFTH DIVISION
September 29, 2017

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 97 CR 11558
)	
DERRICK HARRIS,)	The Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

- ¶1 *HELD:* Defendant's sentence complied with the challenged statute.
- ¶2 Defendant, Derrick Harris, was found guilty of, *inter alia*, three counts of aggravated criminal sexual assault and one count of home invasion, and was sentenced to four consecutive 30-year prison terms. His conviction and sentence were affirmed on direct appeal. *People v. Harris*, 314 Ill. App. 3d 409 (2000). Following a series of postconviction petitions and appeals, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)), alleging his aggregate 120-year

sentence is void. The petition was denied. On appeal, defendant contends his sentence was not authorized by statute and, thus, is void. In the alternative, defendant requests that this court reduce his sentence pursuant to Illinois Supreme Court Rule 615(b). Based on the following, we affirm.

¶3 **FACTS**

¶4 The facts of defendant’s underlying conviction involving the horrifying offenses committed against a 15-year-old girl in 1997 are unnecessary for the resolution of the instant appeal. In affirming defendant’s conviction and sentence on direct appeal, this court expressly noted that defendant did “not argue that consecutive sentences were improperly imposed under the sentencing code.” *Harris*, 314 Ill. App. 3d at 419-20. This court found the trial court did not abuse its discretion in imposing the aggregate 120-year prison term. *Id.* at 420.

¶5 In 2000, defendant filed his first *pro se* postconviction petition alleging sentencing issues. That petition was dismissed at the second stage of review and, on appeal, defendant’s appellate counsel was given leave to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551 (1987). *People v. Harris*, No. 1-05-2302 (2007) (unpublished under Supreme Court Rule 23). In 2005, defendant filed a successive *pro se* postconviction petition alleging claims of ineffective assistance of counsel. The successive petition was dismissed following second-stage review. On appeal, this court ultimately affirmed the dismissal of the successive postconviction petition. *People v. Harris*, 2012 IL App. 103064-U.¹

¶6 On January 2, 2013, defendant mailed the underlying *pro se* section 2-1401 petition for relief from judgment. In the section 2-1401 petition, defendant alleged that, because he was not

¹ The petition was reversed and remanded in the interim because the trial court failed to allow the State to file a written motion to dismiss, as required by statute. *People v. Harris*, No. 1-08-0757 (2009) (unpublished order pursuant to Supreme Court Rule 23). On remand, the State filed a written motion to dismiss, which the trial court granted.

eligible for an extended-term sentence, his sentence was void where the aggregate of his consecutive sentences could not exceed 60 years' imprisonment pursuant to section 5-8-4(c)(2) of the Unified Code of Corrections (Code of Corrections) (730 ILCS 5/5-8-4(c)(2) (West 1996)). Defendant cited *People v. Arna*, 168 Ill. 2d 107 (1995), in support of his claim that his void sentence could be attacked at any time. The petition was filed on January 28, 2015, and the trial court *sua sponte* dismissed it on February 5, 2015. Defendant appealed. On appeal, this court did not address the substance of defendant's section 2-1401 petition, but held that the trial court prematurely dismissed the petition without having provided the State with 30 days to respond. *People v. Harris*, 2015 IL App (1st) 130947-U. Following remand, the trial court then waited 30 days prior to denying defendant's petition. This appeal followed.

¶7

ANALYSIS

¶8 Defendant contends that the trial court impermissibly entered a void sentence where the aggregate of his consecutive sentences could not exceed 60 years' imprisonment because he was not eligible for an extended-term sentence.

¶9 Section 2-1401 provides a comprehensive statutory procedure allowing for the vacatur of a final judgment after 30 days. 735 ILCS 5/2-1401 (West 2012). In order to obtain relief, a defendant must prove by a preponderance of the evidence the existence of a defense or claim that would have precluded entry of the judgment in the original action, diligence in discovering that defense or claim, and diligence in presenting the petition. *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007). A section 2-1401 petition must be filed within two years after the entry of the order or judgment unless the defendant was under legal disability or duress or the ground for relief was fraudulently concealed. 735 ILCS 5/2-1401(c) (West 2012). We review *de novo* the denial of a section 2-1401 petition for relief. *Vincent*, 226 Ill. 2d at 18.

¶10 Defendant's section 2-1401 petition was filed more than 2 years after entry of judgment in his underlying case. Defendant, however, argues that the supreme court's ruling in *People v. Castleberry*, 2015 IL 116916, which abolished the void sentence rule created in *Arna*, does not have retroactive effect. Defendant additionally argues that *Castleberry* is distinguishable where the sentence at issue in this case was impermissibly high. Defendant finally argues, in the alternative, that this court has the power to reduce his sentence pursuant to Rule 615(b)(4). All of defendant's arguments rely on the premise that his sentence exceeded that allowed by statute. We disagree.

¶11 Section 5-8-4(c)(2) of the Code of Corrections provided, at the relevant time, that "[f]or sentences imposed under the law in effect prior to February 1, 1978 the aggregate maximum of consecutive sentences shall not exceed the maximum term authorized under Section 5-8-2 for the 2 most serious felonies involved." 730 ILCS 5/5-8-4(c)(2) (West 1996).

¶12 According to defendant, because the trial court did not impose an extended-term sentence, the extended-term sentences authorized by section 5-8-2 of the Code of Corrections (730 ILCS 5/5-8-2 (West 1996))² cannot be used to measure the aggregate of consecutive sentences allowed by section 5-8-4(c)(2). In other words, defendant insists the maximum consecutive sentence for which he was eligible was 60 years' imprisonment because the two most serious felonies involved in his case were class X and carried a maximum penalty of 30 years' imprisonment.

¶13 On review, our courts consistently have rejected defendant's argument. See, e.g., *People v. Woods*, 131 Ill. App. 3d 51 (1985); *People v. Beck*, 190 Ill. App. 3d 748 (1989); *People v. Myrieckes*, 315 Ill. App. 3d 478 (2000). In *Woods*, this court flatly rejected the argument that the extended-term sentences authorized by section 5-8-2 could not be used in computing the

² Extending a class X sentence to not less than 30 years and not more than 60 years.

maximum aggregate of consecutive sentences allowed by section 5-8-4(c)(2). 131 Ill. App. 3d at 55. The court held that section 5-8-4(c)(2) referred to section 5-8-2 “only as a measuring statute.” *Id. Woods* was cited favorably in both *Beck* and *Myrieckes*. In *Myrieckes*, the Third District noted that the plain language of section 5-8-4(c)(2) refers to the “maximum terms authorized” by section 5-8-2 and not the maximum term for which a particular defendant is eligible. 315 Ill. 3d at 482.

¶14 We find no reason to depart from the established precedent. Although defendant was not sentenced to an extended term, the two most serious felonies involved were extendable class X penalties each carrying a maximum sentence of 60 years’ imprisonment. We, therefore, conclude that defendant’s aggregate sentence of 120 years’ imprisonment complied with section 5-8-4(c)(2) of the Code of Corrections. See 730 ILCS 5/5-8-4(c)(2) (West 1996).

¶15 Because we have found defendant’s substantive argument lacks merit, we need not address his remaining arguments which all rely on the validity of the latter.

¶16 CONCLUSION

¶17 We affirm the denial of defendant’s section 2-1401 petition for relief of judgment.

¶18 Affirmed.