

2017 IL App (1st) 161477-U  
No. 1-16-1477  
Order filed September 27, 2017

Third 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. YG 795173
	)	
IVAN BREZDEN,	)	Honorable
	)	Jill C. Marisie,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Cobbs and Justice Howse concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court properly dismissed defendant's section 2-1401 petition asking the court to vacate his 10-year-old conviction as void because the trial court did not appoint an interpreter.

¶ 2 Following a bench trial in 2006, defendant Ivan Brezden was convicted of driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2004)) and was sentenced to one year of supervision. In 2016, defendant filed a motion for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2014)),

asserting the trial court did not ask if he understood the proceedings and that the court should have appointed an interpreter for him during his trial and at sentencing. The circuit court dismissed defendant's petition as untimely. We affirm.

¶ 3 In February 2006, defendant was arrested and charged with DUI and other vehicle-related violations. Before defendant's trial in June 2006, the trial court admonished defendant regarding his right to a jury trial. Defendant responded to the court's inquiries by stating "yeah" or "yes."

¶ 4 At trial, a Palatine police officer testified that he conducted a traffic stop and field sobriety tests on defendant. The officer's testimony indicated he spoke to defendant and that defendant responded appropriately to his directions to get out of the car and complete the sobriety testing. The officer described each test and defendant's performance on each test.

¶ 5 After his arrest, defendant was taken to the police station and then to a hospital because he complained of feeling ill. Defendant refused to submit to a blood test, and his parent was called to consent to the test because defendant was 17 years old. The trial court found defendant guilty of DUI and sentenced him to one year of supervision.

¶ 6 On April 1, 2016, defendant filed a motion for relief from judgment, citing section 2-1401 of the Code. In the motion, defendant argued his conviction should be vacated and "deemed legally VOID" because the trial court did not "hav[e] a Russian/Ukrainian speaking translator" during the trial or sentencing. According to the motion, when defendant arrived in the United States in 2001, he did not speak or understand English and "by the time of his arrest in this case, while his English was undoubtedly improved, it was still lacking especially in regards to more complex or unusual conversations." The motion asserted that defendant's trial counsel

spoke Russian and conversed with defendant “at all times during their representation in his native language.”

¶ 7 The motion stated that the trial court did not “conduct any sort of inquiry whatsoever as to whether the Petitioner understood the proceedings or whether he wanted or preferred a translator to assist him” and the court also did not ask defense counsel if defendant needed an interpreter. Additionally, the motion asserted the trial court did not advise defendant of his right to appeal.

¶ 8 On May 17, 2016, after hearing argument, the circuit court dismissed defendant’s petition. The court noted that neither defendant nor his counsel requested an interpreter in numerous pretrial appearances before different judges or at trial, and the court also noted that the trial judge and defendant conversed in English during defendant’s waiver of a jury trial. The court concluded that it lacked jurisdiction over the motion because defendant’s case was 10 years old. Defendant filed a notice of appeal from that ruling on May 31, 2016.

¶ 9 On appeal, we first address defendant’s presentation of his claim via a petition for relief from judgment under section 2-1401. This court reviews the dismissal of a section 2-1401 petition *de novo*. *People v. Matthews*, 2016 IL 118114, ¶ 9.

¶ 10 A petition filed pursuant to section 2-1401 allows relief from an order or judgment more than 30 days but less than 2 years after the entry of the order or judgment in question. 735 ILCS 5/2-1401(a), (c) (West 2014). Subject to exceptions not relevant in this case, a petition under section 2-1401 must be filed “not later than 2 years after the entry of the order or judgment” unless the petitioner has been under legal disability or duress or unless the ground for relief was

fraudulently concealed. 735 ILCS 5/2-1401(c) (West 2014). Defendant does not claim either of those two circumstances occurred here. Thus, the two-year bar applies to defendant's case.

¶ 11 Because defendant filed his petition nearly 10 years after his trial and sentencing, he now attempts to circumvent the time limit in section 2-1401 by claiming his conviction is void due to the trial court's failure to appoint an interpreter. However, defendant can no longer use the voidness exception to section 2-1401 to challenge a judgment more than two years after its entry. *People v. Price*, 2016 IL 118613, ¶ 17 (citing *People v. Castleberry*, 2015 IL 116916, ¶¶ 17-19).

¶ 12 Prior to defendant's filing of his section 2-1401 petition in this case, our supreme court held in *Castleberry* that the "void sentence" rule, or the ability for a defendant to challenge a sentence at any time, was no longer valid. *Id.* ¶ 15. Under *Castleberry*, a void judgment involving "only the most fundamental defects" such as the lack of personal or subject matter jurisdiction. *Price*, 2016 IL 118613, ¶¶ 30-31; see, e.g., *People v. Williams*, 2017 IL App (1st) 123357-B, ¶ 24 (the dismissal of a postconviction petition more than 90 days after its filing presented a voidable, not void, judgment, because the court had both personal and subject matter jurisdiction). Defendant does not raise any jurisdictional defect in this case.

¶ 13 Moreover, this court has rejected the contention that the absence of an interpreter renders a defendant's conviction void. In *People v. Raczkowski*, 359 Ill. App. 3d 494, 495 (2005), the defendant pled guilty to retail theft and was sentenced to one year of conditional discharge; 13 years later, the defendant filed a petition to vacate the judgment, asserting his plea and conviction were void because he did not speak English and no interpreter was present during the proceedings. Although the defendant cited no authority in his motion, the circuit court treated the

motion as being brought pursuant to section 2-1401(f) of the Code. *Id.* at 495 n.1. The circuit court denied the defendant's motion as untimely. *Id.* at 495-96.

¶ 14 In affirming the motion's dismissal, the appellate court in *Raczkowski* found that the defendant's guilty plea would not be void for lack of jurisdiction but merely voidable, meaning it was entered erroneously by a court acting within its jurisdiction and could be corrected if a timely appeal was taken. *Id.* at 498-99 (citing *People v. Speed*, 318 Ill. App. 3d 910, 914 (2001)). This court found the absence of an interpreter "did not divest the trial court of jurisdiction" over the defendant "but instead merely rendered his resultant guilty plea voidable if challenged in a timely manner." *Raczkowski*, 359 Ill. App. 3d at 498. Here, as in *Raczkowski*, defendant raises the issue of the court's failure to appoint an interpreter with no regard for the time limitations of making such an argument.

¶ 15 Furthermore, even if defendant's contention had been timely raised, its substance does not support his claim for relief. Defendant asserts the trial court should have asked at his trial if he needed an interpreter. Defendant cites the Criminal Proceedings Interpreter Act, which states, in pertinent part:

"Whenever any person accused of committing a felony or misdemeanor is to be tried in any court of this State, the court shall upon its own motion or that of defense or prosecution determine whether the accused is capable of understanding the English language and is capable of expressing himself in the English language so as to be understood directly by counsel, court or jury. If the court finds the accused incapable of so understanding or so expressing himself, the court shall appoint an interpreter for the

accused whom he can understand and who can understand him.” 725 ILCS 140/1 (West 2006).

¶ 16 Whether an interpreter is made available to the defendant is within the discretion of the trial court. *People v. Argueta*, 2015 IL App (1st) 123393, ¶ 33 (noting the statute does not include any “criteria for exercising that discretion”). *Argueta* held the trial court must consider “the factual question of whether an interpreter is needed.” *Id.* ¶ 34.

¶ 17 Here, the trial court had no basis to request an interpreter for defendant. Neither defendant nor defense counsel stated the need for an interpreter. Additionally, the record does not reveal any reason for the court to suspect that defendant could not understand the proceedings. The record reflects that when defendant orally waived the right to a jury trial, he answered the court’s questions in English. The officer who testified at trial described the sobriety tests performed by defendant, and his testimony indicated that defendant followed his directions.

¶ 18 In conclusion, pursuant to *Price* and *Castleberry*, defendant can no longer challenge his conviction at any time by way of a section 2-1401 petition. Furthermore, even if defendant had shown that such assistance was needed, the absence of an interpreter would not have rendered defendant’s conviction void, but rather voidable. Additionally, the record reflects no basis for the trial court to have appointed an interpreter in this case.

¶ 19 Accordingly, the judgment of the Circuit Court of Cook County dismissing defendant’s petition is affirmed.

¶ 20 Affirmed.