

No. 1-16-2023

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

In re: PHILLIP T., a Minor,)	Appeal from the
)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Cook County
)	
Respondent-Appellant,)	
)	
v.)	No. 2004 JD 4034
)	
PHILLIP T., a Minor)	Honorable
)	Terrence Sharkey,
Petitioner -Appellee).)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We reversed the trial court's order granting a section 2-1401 petition (735 ILCS 5/2-1401 (West 2014)) and denying the State's motion to reconsider, finding that the petition was untimely and that the trial court lacked the statutory authority to vacate an adjudication of delinquency based upon the successful completion of probation.

¶ 2 Phillip T. filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)), seeking an order vacating his delinquency adjudication and sentence, including his obligation to register as a sex offender. The trial court granted the petition, and denied the State's subsequent motion to reconsider. The State filed the

instant appeal arguing, *inter alia*, that Phillip's section 2-1401 petition was untimely and that the trial court lacked statutory authority to grant the relief requested. For the reasons which follow, we reverse the trial court's orders granting Phillip's section 2-1401 petition and denying the State's motion to reconsider.

¶ 3 The facts relevant to this appeal are undisputed. On July 15, 2004, the State filed a petition for adjudication of wardship against Phillip, charging that he committed aggravated criminal sexual assault against his six-year old cousin.

¶ 4 On November 1, 2004, Phillip appeared in court with counsel. The trial court was informed that, pursuant to a plea agreement, Phillip would plead guilty to the charge against him in exchange for the State's recommendation of an agreed-upon sentence. The trial court addressed Phillip and determined that he understood the nature of the charge against him, the possible penalty, and the rights he would be waiving by pleading guilty. The trial court also advised Phillip that it was not bound by the sentence recommended by the State. Thereafter, the parties stipulated to the facts underlying the charge which the trial court determined would be sufficient for a conviction of aggravated criminal sexual assault. Phillip then entered a plea of guilty. Finding that Phillip was acting voluntarily, the trial court accepted the plea, entered a finding of delinquency, and adjudicated Phillip a ward of the court.

¶ 5 On December 15, 2004, a dispositional hearing was held. The trial court sentenced Phillip to five years' probation with certain attendant conditions and 30 days' incarceration in the Juvenile Detention Center which was considered served during his pretrial detention. In announcing the sentence, the trial judge stated:

"[Y]our motion, oral motions to vacate the finding of delinquency will be entered and continued and it's my intent if he satisfactorily completes this period of probation, that he

does it, the DNA swab should be retrieved from the State Police Authority and he will no longer have to register as a sex offender because I'm vacating the finding of delinquency. And that gives him an opportunity to get back the normalcy of his life, I hope, at whatever. But, he's got to earn that right. If he doesn't get through the probation, it's all a moot point."

And, in the sentencing order, the trial court provided, over the State's objection, that a motion to vacate was entered and continued.

¶ 6 The matter again came before the court on December 9, 2009. The trial court entered an order on that date which states: "The order of probation is terminated satisfactorily" and "[c]ase closed."

¶ 7 On January 11, 2016, Phillip filed a petition pursuant to section 2-1401 of the Code, seeking an order vacating his delinquency adjudication and the sentence imposed on December 15, 2004. The petition alleged that Phillip successfully completed his probation and had complied with all of the conditions thereof, including having registered as a sex offender for ten years. Set forth within the petition is the statement which the trial court made when sentencing Phillip. In his affidavit in support of the petition, Phillip stated: "I relied upon Judge Sharkey's words of December 15, 2004."

¶ 8 On April 18, 2016, the trial court granted Phillip's section 2-1401 petition. The record before us does not contain a written order granting the petition, but the transcript of the hearing held on that date reflects that the trial court orally granted the petition and stayed its order. The State filed a motion for reconsideration on May 18, 2016, arguing, *inter alia*, that the petition was untimely and that the trial court lacked statutory authority to vacate its finding of delinquency based upon Phillip having successfully completed his probation. On June 30, 2016,

No. 1-16-2023

the trial court entered a written order, granting Phillip's section 2-1401 petition and vacating his adjudication of delinquency and sentence, including his obligation to register as a sex offender.

¶ 9 On July 26, 2016, the State filed an addendum to its motion to reconsider, raising the defenses of *res judicata* and collateral estoppel. The trial court entered a written order on July 27, 2016, stating that "the addendum to the motion to reconsider filed by the State on 7/26/16 is hereby denied." On that same date, the State filed a notice of appeal from the trial court's order of June 30, 2016, and a certificate of impairment.

¶ 10 In urging reversal of the trial court's order denying its motion to reconsider the order granting Phillip's section 2-1401 petition, the State argues both that the petition was untimely and that the trial court lacked statutory authority to vacate Phillip's adjudication as a delinquent minor. We agree with both arguments.

¶ 11 Section 2-1401 of the Code provides a statutory scheme by which final orders of the trial court may be challenged more than 30 days after their entry. 735 ILCS 5/2-1401(a) (West 2014); *People v. Harvey*, 196 Ill. 2d 444, 447 (2001). The remedial power of section 2-1401 is extended to criminal cases (see *id.*) and juvenile delinquency matters (see *People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 456-57 (2007)). Absent a clear showing that the person seeking relief has been under a legal disability or duress, that the grounds for relief have been fraudulently concealed, or that the judgment being challenged is void, a section 2-1401 petition filed beyond the two-year period provided in the statute is untimely and should be denied. *Harvey*, 196 Ill. 2d at 447.

¶ 12 In this case, Phillip was adjudicated a delinquent on November 1, 2004, and sentenced on December 15, 2004. It was not until January 11, 2016, that Phillip filed his section 2-1401 petition to vacate the adjudication and sentence. Clearly, the petition was filed beyond the two-

No. 1-16-2023

year limitation period set forth in section 2-1401 of the Code, and neither the petition nor Phillip's brief on appeal asserts a statutory basis for tolling the two-year filing period (see 735 ILCS 5/2-1401(c) (West 2014)).

¶ 13 The two-year limitation period contained in section 2-1401 of the Code does not affect a petitioner's right to seek relief from a void order. 735 ILCS 5/2-1401(f) (West 2014). The transcript of the proceedings in this case reflects that the trial judge believed that the sentencing order entered on December 15, 2004, was "void *ab initio*." The judge's conclusion in this regard appears to be based upon the fact that, when sentencing Phillip, he represented that the delinquency adjudication and sentence would be vacated and Phillip's record could be expunged if he successfully completed his probation. Acknowledging that he had no authority to vacate a finding of delinquency based merely upon the successful completion of probation (see *Stralka*, 226 Ill. 2d at 454), the trial judge appears to have reasoned that his original sentencing order was void because Phillip relied upon his representations in pleading guilty.

¶ 14 As the State points out, however, the only orders of the trial court which are void are those entered in the absence of jurisdiction over either the person or the subject matter. *People v. Castleberry*, 2015 IL 116916, ¶¶ 12, 18. And in this case, it is undisputed that the trial court possessed both when it entered its sentencing order. Therefore, the trial court's sentencing order of December 15, 2004, was not void.

¶ 15 Having determined that the trial court's sentencing order was not void and that there is no statutory basis for tolling the two-year limitation period contained in section 2-1401, we conclude that Phillip's section 2-1401 petition was untimely and should have been denied on that basis. Timeliness aside, we also believe that the petition is deficient on the merits.

¶ 16 Nothing in the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2004)) gives the trial court the authority to vacate an adjudication of delinquency based upon subsequent good behavior and the successful completion of an imposed sentence. *Stralka*, 226 Ill. 2d at 454. Placing a juvenile on probation and later vacating his delinquency adjudication is tantamount to granting supervision. Supervision in a juvenile delinquency proceeding is only available before an adjudication of delinquency and with the consent of the State's Attorney. See 705 ILCS 405/5-615(1) (West 2004); *Stralka*, 226 Ill. 2d at 454.

¶ 17 The trial court in this case effectively transformed its sentencing disposition into supervision and circumvented the State's statutory right to reject such a disposition when it granted Phillip's section 2-1401 petition and vacated his delinquency adjudication. In so doing, the trial court exceeded its statutory authority. *Stralka*, 226 Ill. 2d at 453-54. And, although the trial court is authorized to grant section 2-1401 relief in a juvenile proceeding, the relief cannot be based upon evidence that did not exist at the time of the judgment. *Id.* at 457. We conclude, therefore, that the trial court erred as a matter of law when it granted Phillip's section 2-1401 petition.

¶ 18 For the reasons stated, we reverse the trial court's orders granting the petitioner's section 2-1401 petition and denying the State's motion for reconsideration.

¶ 19 Reversed.