2017 IL App (2d) 150906-U
No. 2-15-0906
Order filed February 17, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 94-CF-646
	)	
GEORGE L. REYES,	)	Honorable
	)	Victoria A. Rossetti,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Hudson and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied respondent's section 2-1401 petition; the petition was untimely, and the challenged judgment was not void.

¶ 2 In 1994, respondent, George Reyes, was found to be a sexually dangerous person pursuant to the Sexually Dangerous Persons Act (SDPA) (725 ILCS 205/0.01 *et seq.* (West 1994)). Almost 21 years later, he filed a petition to vacate the original commitment order pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)). The trial court denied the petition, and respondent appeals. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 4, 1994, respondent was charged by indictment with nine counts of aggravated criminal sexual assault (720 ILCS 5/12-14(b)(1) (West 1994)) and ten counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 1994)). The charges related to the alleged sexual assault and abuse of seven different children over a period of several years.

¶ 5 On July 7, 1994, the State and respondent presented the following agreement to the trial court. Respondent would plead guilty to aggravated criminal sexual assault (counts III, V, IX, and XVIII of the indictment). In exchange, the parties agreed to an aggregate sentencing cap of 38 years' imprisonment. At the same time, with respect to the allegations of aggravated criminal sexual abuse in counts I and VII of the indictment, the State would petition for a finding pursuant to the SDPA that respondent was a sexually dangerous person. If respondent were found to be a sexually dangerous person, his commitment would run concurrent to his sentence on the aggravated criminal sexual assault counts. However, if respondent were found not to be a sexually dangerous person, he would plead guilty to counts I and VII, and he would still be subject to the aggregate 38-year sentencing cap. In any event, the remaining charges would be dismissed. The court accepted respondent's guilty pleas pursuant to these terms.

¶ 6 On August 15, 1994, the court found respondent to be a sexually dangerous person in connection with counts I and VII of the indictment. The court then proceeded to sentencing on counts III, V, IX, and XVIII. The court sentenced respondent to concurrent 25-year terms of imprisonment on each of those counts.

¶ 7 Respondent filed a direct appeal, and this court affirmed the judgment. *People v. Reyes*, No. 2-95-0108 (1996) (unpublished order under Illinois Supreme Court Rule 23). We held that the trial court did not abuse its discretion in sentencing respondent to 25 years' imprisonment on

each of the four counts of aggravated criminal sexual assault. Although respondent separately challenged his commitment as a sexually dangerous person, we determined that we lacked jurisdiction to consider his arguments, because he had not specified in his notices of appeal that he intended to appeal from that aspect of the judgment.

¶ 8 On May 11, 2001, respondent requested a recovery hearing pursuant to section 9 of the SDPA (725 ILCS 205/9 (West 2000)). Following a hearing that was held in June 2002, a jury determined that respondent continued to be a sexually dangerous person. Respondent then pursued a second appeal. One of the issues he raised on appeal was "that his original 1994 commitment under the SDPA should be reversed because a person cannot be committed as a sexually dangerous person and simultaneously be criminally punished." We rejected that argument. However, for reasons that are not relevant to the present appeal, we remanded the matter for a new recovery hearing. See *People v. Reyes*, No. 2-02-0659 (2005) (unpublished order under Illinois Supreme Court Rule 23). In November 2009, respondent ultimately withdrew his recovery petition.

¶ 9 On June 10, 2015, respondent petitioned to vacate aspects of the August 15, 1994, court orders pursuant to section 2-1401 of the Code. Specifically, he asserted that the order declaring him to be a sexually dangerous person was void "because it was entered without statutory authority." The gravamen of his argument was that he "could not be both criminally prosecuted and simultaneously civilly committed as a sexually dangerous person." The record reflects that respondent's counsel was unaware at the time he prepared the petition that this precise issue had been addressed in the 2005 disposition of respondent's appeal after the June 2002 hearing.

¶ 10 The State responded that the petition was untimely because it was not filed within two years of the judgment being challenged. The State also addressed the substance of respondent's

claims, insisting that there was no legal impropriety. In his reply brief, respondent maintained that the order committing him was void *ab initio* and that the normal time restraints and pleading requirements applicable to section 2-1401 petitions did not apply.

¶ 11 In light of respondent's allegation that the judgment at issue was void, the court declined to strike the petition as untimely. The court took the matter under advisement. The State subsequently alerted the court that the issue of simultaneous civil commitment and criminal punishment had been resolved in respondent's 2005 appeal. The court allowed respondent to file a supplemental brief addressing whether the law-of-the-case doctrine precluded re-litigation of the issue. On August 28, 2015, the court denied respondent's petition to vacate the 1994 commitment order. Respondent filed a timely appeal.

¶ 12 II. ANALYSIS

¶ 13 On appeal, respondent reiterates his argument that the trial court erred in 1994 when it committed him civilly while also imposing a criminal sentence. However, we not need consider the merits of respondent's claim. His petition to vacate was untimely, and the judgment that he challenges was not void. Accordingly, the trial court properly denied his section 2-1401 petition.

¶ 14 Section 2-1401 of the Code provides a mechanism for challenging final judgments in both civil and criminal cases. *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007). Typically, the petition to vacate must be brought within two years of the entry of the order or judgment being challenged. 735 ILCS 5/2-1401(c) (West 2014). However, the two-year time limitation does not apply to petitions brought on grounds of voidness. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). In the present case, respondent filed a petition in 2015 seeking to vacate a decades-old judgment, and his purported justification for doing so was that the judgment was void. Accordingly, the critical issue is whether the August 15, 1994, commitment order was

actually void, as opposed to merely voidable. See *People v. Brown*, 2016 IL App (2d) 140458, ¶ 9. The question of whether a judgment is void presents a legal issue, which we review *de novo*. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 47. We review the trial court's judgment, not its reasoning, and we may affirm on any basis appearing in the record. *Rommel v. Illinois State Toll Highway Authority*, 2013 IL App (2d) 120273, ¶ 24.

¶ 15 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)). "Personal jurisdiction refers to the court's power 'to bring a person into its adjudicative process.' " *Castleberry*, 2015 IL 116916, ¶ 12 (quoting *M.W.*, 232 Ill. 2d at 415). In contrast to a void judgment, a voidable judgment " 'is one entered erroneously by a court having jurisdiction.' " *Castleberry*, 2015 IL 116916, ¶ 11 (quoting *People v. Davis*, 156 Ill. 2d 149, 155 (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. *Castleberry*, 2015 IL 116916, ¶¶ 13, 19.

¶ 16 Pursuant to *Castleberry*, it is clear that the 1994 order committing respondent as a sexually dangerous person was not void, because the trial court unquestionably had both subject matter jurisdiction and personal jurisdiction. Accordingly, even if the court erred, it is too late to challenge that judgment via a section 2-1401 petition to vacate. See *Brown*, 2016 IL App (2d)

140458, ¶ 9 ("In this case, however, faced with a defendant's challenge to a statutorily unauthorized sentence, we can do nothing.").

¶ 17 Respondent advances numerous reasons why *Castleberry* supposedly "has no bearing" on his claims. He first asserts that the State waived its argument that the claims were time-barred by failing to raise that issue "when this matter came before this Court in 2005." However, the 2005 appeal did not involve a section 2-1401 petition, so the State could not have relied on the two-year limitation applicable to such petitions. Additionally, the briefs relating to respondent's 2005 appeal are not in the record, so we do not know whether the State did or did not raise the issue of timeliness in that appeal. Moreover, *Kreutzer v. Illinois Commerce Commission*, 2012 IL App (2d) 110619, ¶ 37, which respondent cites, is distinguishable. Unlike *Kreutzer*, this is not a case where a party appealed once, we remanded the matter for additional proceedings, and the party subsequently appealed a second time raising arguments that should have been raised in the first appeal.

¶ 18 Respondent next notes that the trial court denied his petition to vacate several months before *Castleberry* was decided, and he argues that the rules outlined in that case cannot be applied retroactively. Our supreme court recently rejected this precise argument. See *People v. Price*, 2016 IL 118613, ¶ 26 ("The question yet remains whether the rule announced in *Castleberry* should apply to defendant's section 2-1401 petition, which was pending before this court when *Castleberry* was decided. The answer is 'yes.' ").

¶ 19 Respondent next argues that *Castleberry* does not bar his claims, inasmuch as there was no "justiciable matter" for the trial court to decide in 1994 after it accepted respondent's guilty pleas on the four criminal charges. Respondent's argument proceeds as follows. He observes that our State constitution extends the jurisdiction of the circuit courts to all justiciable matters.

See Ill. Const. 1970, art. VI, § 9. "Justiciable matter" has been defined 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, 335 (2002). Respondent then cites *People v. Nastasio*, 19 Ill. 2d 524, 531 (1960), for the proposition that, in respondent's words, once the court accepted respondent's guilty pleas, "any proceedings under the Sexually Dangerous Persons Act were foreclosed, and therefore moot." According to respondent, "[g]iven that mootness goes to whether an issue is 'justiciable,' and a court only has subject-matter jurisdiction over 'justiciable' issues, it follows that [he] could raise the issue of mootness at any time."

¶ 20 There are multiple problems with respondent's argument. As an initial matter, *Nastasio* did not address mootness. Instead, respondent quotes a sentence from *Nastasio* mentioning "void" orders. However, that case was decided in 1960 (prior to the adoption of the current constitution), and "the precedential value of case law which examines a court's jurisdiction under the pre-1964 judicial system is necessarily limited to the constitutional context in which those cases arose." *Belleville Toyota*, 199 Ill. 2d at 337. Moreover, even if respondent is correct that the trial court in his case should not have proceeded on the State's petition for civil commitment once respondent pleaded guilty to other criminal charges, this means only that the court committed error, not that the controversy was moot. A matter is moot where there is no actual controversy or where the issues involved no longer exist because intervening events have rendered it impossible to grant effectual relief to the complaining party. See *In re Merrilee M.*, 409 Ill. App. 3d 983, 984 (2011). In 1994, respondent and the State agreed that the State would pursue criminal convictions on certain charges of the indictment while pursuing civil

commitment in connection with other charges. Regardless of whether there was a valid legal basis for proceeding in that manner, there was certainly an actual controversy, and no intervening events rendered it impossible to grant either party effectual relief. Accordingly, respondent's arguments regarding the lack of a justiciable matter are without merit.

¶ 21 Citing *People v. Ross*, 191 Ill. App. 3d 1046, 1053 (1989), respondent next mentions that that the two-year limitation period applicable to section 2-1401 petitions is not jurisdictional. Although *Ross* held that the limitations period is subject to waiver, the State in the present case plainly did not waive or forfeit the issue. The State argued in its response to the petition that the petition was untimely.

¶ 22 Finally, respondent contends that this court "should not resort to a mechanical application of Section 2-1401's deadline" and that it would be "manifestly unjust" to do so. To that end, he emphasizes that (1) he attempted to challenge his civil commitment in his 1996 direct appeal, but we held that we lacked jurisdiction to consider his arguments; (2) the two-year period had already expired by the time we filed our decision in his original appeal; and (3) he does not have the option of challenging his commitment pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)). However sympathetic respondent insists that his circumstances are, his petition was untimely under the reasoning of *Castleberry* and *Price*, and we have no power to overrule the supreme court. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 28.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 25 Affirmed.