

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).

2017 IL App (4th) 130868-U

NO. 4-13-0868

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 5, 2017

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
DARRYL C. SUAREZ,)	No. 00CF1506
Defendant-Appellant.)	
)	Honorable
)	Arnold F. Blockman,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court. Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted appellate counsel’s motion to withdraw and affirmed the trial court’s judgment.

¶ 2 In March 2001, a jury found defendant, Darryl C. Suarez, guilty of two counts of unlawful possession of a controlled substance with intent to deliver. In April 2001, the trial court sentenced him to two concurrent terms of 18 years’ imprisonment. This court affirmed his conviction and sentence. In March and April 2002, defendant filed *pro se* petitions for postconviction relief and for relief from judgment, which the trial court dismissed. This court affirmed the dismissals on appeal. In January 2007, defendant filed a *pro se* petition for *habeas corpus*, which the trial court denied. On appeal, this court granted a motion to withdraw filed by the office of the State Appellate Defender (OSAD) and affirmed the trial court’s judgment. In May 2010, defendant filed a *pro se* petition for *habeas* relief, which the trial court dismissed.

This court affirmed on appeal. In August 2013, defendant filed a *pro se* petition for relief from judgment, which the trial court dismissed.

¶ 3 On appeal, OSAD moves to withdraw its representation of defendant pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), contending an appeal in this cause would be frivolous. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 In March 2001, a jury found defendant guilty of two counts of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(2) (West 2000)). In April 2001, the trial court sentenced him to two concurrent terms of 18 years' imprisonment. Defendant appealed, arguing (1) a witness for the State implied he had a propensity to commit crime, (2) defense counsel provided ineffective assistance, and (3) his sentence was excessive. This court affirmed defendant's conviction and sentence. *People v. Suarez*, No. 4-01-0412 (2002) (unpublished order under Supreme Court Rule 23).

¶ 6 In March 2002, while his direct appeal was pending, defendant filed a *pro se* petition, claiming evidence at trial had been obtained through an unlawful search and seizure, and a *pro se* petition for postconviction relief under the Illinois Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2002)). In April 2002, the trial court considered both petitions and found the issues may have, or could have been, raised in the direct appeal. Thus, the issues were barred by forfeiture and *res judicata*. In the alternative, the court found defendant's claims were frivolous and patently without merit.

¶ 7 Also in April 2002, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2002)), alleging, *inter alia*, five grounds of ineffective assistance of counsel. In one

allegation, defendant claimed counsel was ineffective in failing to cross-examine an officer regarding a storage lease entered into evidence. The trial court found the issues raised were, or could have been, raised on direct appeal and were barred by forfeiture and *res judicata*. Also, the court considered the section 2-1401 petition as a successive postconviction petition and found defendant failed to demonstrate any basis to warrant consideration. The court also found defendant failed to provide supporting documentation to challenge his conviction under section 2-1401 and dismissed the petition.

¶ 8 In May 2002, defendant appealed the dismissal of the petition and postconviction petition, as well as the petition for relief from judgment. In April 2004, this court affirmed the trial court's dismissal. *People v. Suarez*, No. 4-02-0385 (2004) (unpublished order under Supreme Court Rule 23). We also granted OSAD's motion to withdraw as counsel in defendant's appeal of the dismissal of his section 2-1401 petition.

¶ 9 In January 2007, defendant filed a *pro se* petition for *habeas corpus* pursuant to section 10-102 of the Procedure Code (735 ILCS 5/10-102 (West 2006)). Defendant alleged he was being held unlawfully on grounds of false pretenses and conspiracy of false pretenses. Defendant claimed the false-pretenses count was based on "a massive 'web' of criminal lies, deceptions, and cover-ups" by the trial judge, the prosecutor, the police, and the public defender. Defendant argued the crime of false pretenses centered on knowingly withholding title to a lease agreement identified as being addressed to Anita Suarez "by the analogy of the conjoined letter evidence that was seized and unequivocally 'addressed to Anita Suarez.'" Further, defendant claimed Inspector Dale Rawdin knowingly made perjured statements when he testified at trial that he recognized People's exhibit No. 8, stating it was a lease agreement in the name of Darryl Bing and a letter addressed to Anita Suarez. As to the claim of conspiracy of false pretenses,

defendant added his direct appeal counsel and his appellate defender as “coconspirators.”

Defendant again mentioned the lease agreement and letter and claimed the coconspirators knowingly made perjured statements and were liable for the furtherance of the conspiracy and for the cover-up.

¶ 10 In January 2007, the trial court found defendant did not state a claim for *habeas* relief, as it was “a rehash of issues” asserted on direct appeal, in his postconviction petitions, his section 2-1401 petition, and his appeals from those petitions, and his claim was now “simply phrased in conspiratorial and false pretense language.” The court also found the time during which defendant may lawfully be detained had not expired and he failed to state a claim for relief under section 10-124 of the Procedure Code. 735 ILCS 5/10-124 (West 2006).

¶ 11 Defendant appealed, and OSAD moved to withdraw as counsel pursuant to *Finley*. This court affirmed the trial court’s judgment and granted OSAD’s motion to withdraw, finding defendant failed to show he was entitled to *habeas* relief. *People v. Suarez*, No. 4-07-0142 (2008) (unpublished order under Supreme Court Rule 23).

¶ 12 In May 2010, defendant filed another *pro se* petition for *habeas* relief, claiming his conviction was obtained on the grounds of false pretenses and conspiracy of false pretenses. He claimed coconspirators knowingly withheld and destroyed a lease agreement addressed to Anita Suarez. He also argued they illegally introduced a fraudulent storage lease addressed to Darryl Bing, his alias.

¶ 13 In June 2010, the trial court dismissed the petition *sua sponte*, finding defendant’s petition failed to state a claim for *habeas* relief and was “another rehash of issues” made in his prior petitions and appeals. This court affirmed the dismissal of defendant’s petition. *Suarez v. Jackson*, 2011 IL App (4th) 100893-U.

¶ 14 In August 2013, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2012)). Defendant alleged an assistant State’s Attorney violated the “fruit of the poisonous tree doctrine” at his trial by using the storage lease with defendant’s alias. Defendant argued the use of the storage lease made his incarceration unlawful because it prevented him from presenting a defense.

¶ 15 In September 2013, the State filed a motion to dismiss, arguing defendant’s petition was untimely, barred by *res judicata*, and failed to demonstrate his claims were based upon newly discovered evidence. The trial court dismissed the petition, finding defendant’s claim was “simply a new theory based on the same evidence” presented in his previous petitions and appeals. Defendant filed a petition for rehearing, which the court denied. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, OSAD has filed a motion to withdraw as counsel and has included a supporting memorandum pursuant to *Finley*. Proof of service has been shown on defendant. This court granted defendant leave to file additional points and authorities on or before April 20, 2015. Defendant filed a motion in opposition and a reply brief as well. The State also filed a brief. Based on our examination of the record, we conclude, as has OSAD, that an appeal in this cause would be frivolous.

¶ 18 Section 2-1401 of the Procedure Code sets forth a statutory procedure by which final orders and judgments may be challenged more than 30 days after entry. 735 ILCS 5/2-1401 (West 2012); *People v. Vincent*, 226 Ill. 2d 1, 7, 871 N.E.2d 17, 22 (2007). “Relief under section 2-1401 is predicated upon proof, by a preponderance of evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both

discovering the defense or claim and presenting the petition.” *Vincent*, 226 Ill. 2d at 7-8, 871 N.E.2d at 22. Thus, the section 2-1401 petition must set forth specific facts showing “(1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition.” *People v. Lee*, 2012 IL App (4th) 110403, ¶ 15, 979 N.E.2d 992.

¶ 19 Section 2-1401 limits the time in which a defendant may obtain relief, stating “the petition must be filed not later than 2 years after the entry of the order or judgment.” 735 ILCS 5/2-1401(c) (West 2012). “The statute further provides for an exception to the time limitation for legal disability and duress or if the ground for relief is fraudulently concealed.” *Vincent*, 226 Ill. 2d at 7, 871 N.E.2d at 22. “The two-year limitations period, however, does not apply to petitions brought on voidness grounds.” *People v. Moran*, 2012 IL App (1st) 111165, ¶ 13, 977 N.E.2d 801 (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104, 776 N.E.2d 195, 201 (2002)).

¶ 20 In the case *sub judice*, a final judgment against defendant was entered in April 2001, but he did not file his current section 2-1401 petition until August 2013, over 12 years after his conviction. Thus, defendant’s petition was not timely. OSAD argues defendant’s petition does not present newly discovered facts, does not allege due diligence for failing to bring the instant claim sooner, and does not present specific factual allegations of a meritorious defense or claim. Our review of the record, including defendant’s numerous petitions raising similar claims since his conviction, reveals OSAD’s arguments are correct. Accordingly, we conclude no colorable claim can be made that the trial court erred in dismissing defendant’s petition.

¶ 21

III. CONCLUSION

¶ 22 For the reasons stated, we grant OSAD's motion and affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 23 Affirmed.