

**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).

**FILED**  
July 10, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 150105-U

NO. 4-15-0105

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
TRAVIONTE WILLIAMS,	)	No. 09CF1862
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Turner and Justice Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* We grant appointed counsel's motion to withdraw as counsel on appeal and affirm the trial court's judgment where no meritorious issues could be raised on appeal.

¶ 2 This case comes to us on the motion of the Office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the following reasons, we grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In January 2012, we addressed the factual background of defendant Travionte Williams' criminal case in *People v. Williams*, 2012 IL App (4th) 100710-U. Only those facts necessary for this appeal are set forth.

¶ 5 In November 2009, the State charged defendant by indictment with one count of

attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2008)), and one count of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West Supp. 2009)). Following a June 2010 jury trial, defendant was found not guilty of attempt (first degree murder) and guilty of aggravated battery with a firearm. In July 2010, the trial court sentenced defendant to 18 years' imprisonment.

¶ 6 On direct appeal, defendant argued (1) he received ineffective assistance from trial counsel where counsel failed to impeach a witness by introducing evidence regarding his witness's "pending case," (2) his \$25 violent-crime-victim's-assistance fund (VCVA) fine must be reduced because the court imposed additional fines, and (3) he was entitled to a \$5-per-day credit against his drug-court fee for time he spent in pretrial custody. The State conceded (1) defendant's VCVA fine should be reduced from \$25 to \$12, and (2) defendant was due *per diem* credit of \$5 a day against his drug-court fee. In January 2012, this court rejected defendant's ineffective-assistance-of-counsel claim and amended his fines and fees order. *Williams*, 2012 IL App (4th) 100710-U, ¶¶ 40, 48.

¶ 7 On December 10, 2014, defendant filed a "*Pro Se* Petition to Vacate and Void the Judgment and Sentence," which was treated as a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2014)). In the petition, defendant challenged the validity of his conviction under the aggravated-battery-with-a-firearm statute (720 ILCS 5/12-4.2) (West Supp. 2009)) based on the following arguments: (1) the prior version of the statute created by Public Act 88-680 (eff. Jan. 1, 1995) was found unconstitutional by *People v. Cervantes*, 189 Ill. 2d 80, 723 N.E.2d 265 (1999), because it violated the single-subject rule; (2) even though the legislature subsequently enacted Public Act 90-651 (eff. Jan. 1, 1999) and Public Act 91-434 (eff. Jan. 1, 2000), which amended

the statute, and Public Act 91-696 (eff. Apr. 13, 2000), which reenacted the statute, those amendments were passed while *Cervantes* was pending, thereby violating the separation-of-powers doctrine; and (3) the passage of Public Acts 90-651, 91-0434, and 91-696 violated the “Rules of Parliamentary Authority” of the Illinois Senate, denying defendant his rights under the fifth, eighth, ninth, and fifteenth amendments to the constitution.

¶ 8 On December 29, 2014, the State moved to dismiss the petition, arguing Public Act 91-696 cured the single-subject rule violation in Public Act 88-680 without violating the separation-of-powers doctrine.

¶ 9 On December 31, 2014, the trial court dismissed the petition, finding it was patently without merit and did not state a cause of action.

¶ 10 On January 28, 2015, defendant placed his notice of appeal in the mail, which was filed on February 4, 2015. On February 6, 2015, OSAD was appointed to represent defendant on appeal.

¶ 11 In August 2016, OSAD moved to withdraw, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and asserted it had thoroughly reviewed the record and concluded any request for review would be without merit. On its own motion, this court granted defendant leave to file additional points and authorities by September 28, 2016. Defendant has not done so.

¶ 12 II. ANALYSIS

¶ 13 OSAD moves to withdraw pursuant to *Finley*, arguing no meritorious arguments can be raised on appeal. OSAD contends (1) the petition was ripe for adjudication and defendant is unable to affirmatively demonstrate the petition was not served in accordance with statutory requirements; (2) Public Acts 90-651, 91-434, and 91-696 did not violate due process or the

separation-of-powers doctrine and, therefore, defendant's conviction was not void; and (3) defendant cannot make a meritorious argument the petition's untimeliness should be excused. Based on our examination of the record, we conclude, as has OSAD, an appeal in this case would be meritless.

¶ 14 Petitions for relief from judgment are governed by section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2014)). "Section 2-1401 is intended to correct errors of fact, unknown to the petitioner and the court at the time of the judgment, which would have prevented the rendition of the judgment had they been known." *People v. Muniz*, 386 Ill. App. 3d 890, 893, 899 N.E.2d 428, 431 (2008). "To be entitled to relief under section 2-1401, the petitioner must set forth specific factual allegations supporting each of the following elements: (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. Dismissal of a petition for relief from judgment is reviewed *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18, 871 N.E.2d 17, 28 (2007).

¶ 15 A. Procedural Requirements of Section 2-1401

¶ 16 First, OSAD addresses the potential issue of whether the parties adhered to the procedural requirements of section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2014)). Under section 2-1401, once a petitioner files and serves a petition, the opponent has 30 days in which to answer the petition or otherwise plead in response (735 ILCS 5/2-1401 (West 2014)). Therefore, the petition becomes ripe for adjudication after 30 days have passed. *People v. Laugharn*, 233 Ill. 2d 318, 322, 909 N.E.2d 802, 804-05 (2009).

¶ 17 Here, defendant filed his petition on December 10, 2014. The State filed its

motion to dismiss on December 29, 2014. The trial court ruled on the petition on December 31, 2014. Thus, OSAD correctly argues the petition was ripe for adjudication.

¶ 18 Further, OSAD addresses the manner in which the petition was served. Section 2-1401(b) of the Procedure Code (735 ILCS 5/2-1401(b) (West 2014)) requires “[a]ll parties to the petition be notified as provided by rule.” Pursuant to Illinois Supreme Court Rule 106 (eff. Aug. 1, 1985), notice of filing of section 2-1401 petitions “shall be given by the same methods provided in Rule 105.” According to Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989), service cannot be made by regular mail but must be served by prepaid certified or registered mail, or by publication. While the dismissal of a section 2-1401 petition may be premature if the petitioner does not properly serve the petition, a reviewing court cannot assume documents placed in the mail were not registered or certified, and thus not properly served on the State. Rather, a remand is warranted only if the record affirmatively establishes deficient service. *People v. Carter*, 2015 IL 117709, ¶ 20, 43 N.E.2d 972.

¶ 19 In the case *sub judice*, this issue was not addressed by the parties in the trial court and the record does not contain any envelope or other document which would affirmatively establish the petition was sent by regular mail rather than certified or registered mail. It is the petitioner’s burden to affirmatively demonstrate improper service, and he cannot do so on this record. *Id.* ¶ 24. Thus, OSAD correctly argues this court should reject any claim the State was not properly served with the petition. Moreover, it is apparent the State received actual notice because it filed a motion to dismiss the petition.

¶ 20 OSAD is correct no meritorious argument can be made on appeal the parties did not adhere to the procedural requirements of section 2-1401.

¶ 21 B. The Issues Raised in Defendant’s Petition

¶ 22 Next, OSAD addresses the issues raised in defendant’s petition, *i.e.*, whether Public Acts 90-651, 91-434, and Act 91-696 violated due process and the separation-of-powers doctrine, thereby rendering void his conviction of aggravated battery with a firearm. Specifically, defendant argues his constitutional rights were violated because, while the question of whether Public Act 88-680 violated the single-subject rule was pending before the Illinois Supreme Court, the legislature violated due process and the separation-of-powers doctrine by passing Public Acts 90-651, 91-434, and 91-696, amending and reinstating the statute, thereby usurping the judiciary’s opportunity to perform its judicial duties.

¶ 23 In *People v. Cervantes*, 189 Ill. 2d 80, 83, 723 N.E.2d 265, 266 (1999), the trial court found Public Act 88-680 did not comply with the single-subject rule, and the State appealed directly to the Illinois Supreme Court. (While the appeal was pending, the legislature amended section 12-4.2 of the Criminal Code (720 ILCS 5/12-4.2) (West Supp. 2009) in Public Acts 90-651 (eff. Jan. 1, 1999) and 91-434 (eff. Jan 1, 2000), and reenacted the statute in Public Act 91-696 (eff. Apr. 13, 2000).) Ultimately, the supreme court declared Public Act 88-680 unconstitutional, and therefore void, because it violated the single-subject requirement of the Illinois Constitution of 1970. *Cervantes*, 189 Ill. 2d at 91, 723 N.E.2d at 270.

¶ 24 To support his claim the legislature violated due process and the separation-of-powers doctrine, defendant cited *Johnson v. Edgar*, 176 Ill. 2d 499, 518-19, 680 N.E.2d 1372, 1381 (1997), claiming the *Johnson* court held, “if the legislature changes [the] law while [an] appeal is pending, [the] case generally must be disposed of by [the] reviewing court under [the] law as it then exists.” Defendant argues this means the Supreme Court must continue to apply a law as it existed prior to the passage of any amendment while its validity is being litigated. According to defendant, any such amendment can never be given effect in the future if the

statute as it existed prior to the amendment is deemed invalid. Therefore, defendant argues, since Public Act 88-680 was not deemed unconstitutional by *Cervantes* until after the legislature passed Public Acts 90-651, 91-434, and 91-696 amending and reenacting 720 ILCS 5/12-4.2 (West Supp. 2009), he was charged under an unconstitutional statute and must be released immediately. Defendant misapprehends the holding in *Johnson*.

¶ 25 In *Johnson*, the Illinois Supreme Court found Public Act 89-428, which included certain environmental impact fees, to be unconstitutional because it violated the single-subject clause of the Illinois Constitution. *Johnson*, 176 Ill. 2d at 517, 680 N.E.2d at 1381. However, the court nonetheless allowed the fees previously collected to be spent because the legislature had passed a curative statute completely recodifying the use of the collected fees while the issue was being litigated. *Johnson*, 176 Ill. 2d at 522, 680 N.E.2d at 1383. In so doing, the court recognized the power of the Illinois legislature to enact curative legislation. *Id.*

¶ 26 In *People v. Reedy*, 186 Ill. 2d 1, 11, 708 N.E.2d 1114, 1119 (1999), Public Act 89-404 was found unconstitutional because it violated the single-subject rule. During the pendency of the appeal, the legislature passed Public Act 90-592 (eff. June 19, 1998), which both deleted and recodified the entire truth-in-sentencing legislation originating from Public Act 89-404. The *Reedy* court found Public Act 90-592 “truly served to cure the effect that the former act’s invalidation had on the truth-in-sentencing law.” *Reedy*, 186 Ill. 2d at 17, 708 N.E.2d at 1121.

¶ 27 Here, when the legislature passed Public Act 91-696, it noted the “Act [was] to re-enact certain criminal provisions of Public Act 88-680” which *Cervantes* had found violated the single-subject rule and was unconstitutional in its entirety. In section 1(2) of Public Act 91-696, the legislature stated further, “It is the purpose of this Act to re-enact certain criminal provisions

of Public Act 88-680, including subsequent amendments. This re-enactment is intended to remove any question as to the validity or content of those provisions.”

¶ 28 To obtain relief under *Reedy*, defendant must show his offense was committed before April 13, 2000, the effective date of Public Act 91-696. See *Reedy*, 186 Ill. 2d at 17-18, 708 N.E.2d at 1121-22. The record shows defendant was charged with aggravated battery with a firearm on November 2, 2009, more than nine years after Public Act 91-696 cured the defect in Public Act 88-680. Accordingly, the aggravated battery statute under which defendant was charged and convicted (720 ILCS 5/12-4.2 (West Supp. 2009)) was valid. Therefore, OSAD correctly argues no meritorious argument can be made defendant’s conviction and sentence are void.

¶ 29 C. The Untimely Filing of the Petition

¶ 30 Last, OSAD addresses whether any exception excuses the untimely filing of defendant’s petition. Under section 2-1401(c) of the Procedure Code, petitions “must be filed not later than 2 years after the entry of the order or judgment” unless the petitioner “is under legal disability or duress or the ground for relief is fraudulently concealed.” 735 ILCS 5/2-1401(c) (West 2014). Therefore, a section 2-1401 petition filed beyond the two-year limitation will normally not be considered. *People v. Caballero*, 179 Ill. 2d 205, 210, 688 N.E.2d 658, 660 (1997). However, section 2-1401(f) provides, “[n]othing contained in this Section affects any existing right to relief from a void order or judgment.” 735 ILCS 5/2-1401(f) (West 2014). Accordingly, Illinois courts have held “[p]etitions brought on voidness grounds need not be brought within the two-year time limitation.” *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104, 776 N.E.2d 195, 202 (2002).

¶ 31 Here, the trial court imposed judgment and sentence on defendant on July 21,



2010. Defendant's petition for relief from judgment was not filed until December 10, 2014, more than four years after the judgment. Defendant did not allege anything prevented him from filing his petition until after the limitations period had run. Rather, in order to overcome the statute of limitations, defendant argued in his petition the judgment against him was void. We have found the judgment was not void. Therefore, OSAD correctly argues no meritorious argument can be made any exception excuses defendant's untimely filing of his petition.

¶ 32

### III. CONCLUSION

¶ 33 For the reasons stated, we grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 34 Affirmed.