

NOTICE
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2017 IL App (5th) 140601-U

NO. 5-14-0601

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 86-CF-329
)	
STEVEN HOFFSTETTER,)	Honorable
)	Neil T. Schroeder,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Moore and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held:* Appointed appellate counsel is granted leave to withdraw, and the circuit court's order denying the defendant's section 2-1401 petition for relief from judgment is affirmed.

¶ 2 The defendant, Steven Hoffstetter, appeals from an order of the circuit court denying his *pro se* petition for relief from judgment. See 735 ILCS 5/2-1401 (West 2012). In his petition, the defendant claimed that the judgment of conviction entered in his underlying criminal case was void because the case had been prosecuted by the State's Attorney of Madison County, and State's Attorneys are members of the judicial branch of government who cannot lawfully prosecute criminal cases. Unsurprisingly, the

defendant's appointed counsel on appeal, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks merit. OSAD has filed a motion to withdraw on that ground. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987). For the reasons that follow, this court grants OSAD's motion and affirms the circuit court's order denying the defendant's section 2-1401 petition.

¶ 3

BACKGROUND

¶ 4 On July 1, 1987, a jury found the defendant guilty of armed robbery (Ill. Rev. Stat. 1983, ch. 38, ¶ 18-2(a)), home invasion (Ill. Rev. Stat. 1983, ch. 38, ¶ 12-11), and three counts of murder (Ill. Rev. Stat. 1983, ch. 38, ¶ 9-1(a)). On August 31, 1987, the circuit court sentenced the defendant to 30 years of imprisonment for armed robbery and for home invasion, and sentenced him to natural-life imprisonment for each of the three murder counts, with all sentences concurrent. Throughout the criminal proceeding in the circuit court, the State was represented by the State's Attorney of Madison County.

¶ 5 The defendant appealed from the judgment of conviction. Before this court, he argued that the State had failed to prove him guilty beyond a reasonable doubt, that the circuit court had erred in some evidentiary rulings and in instructing the jury on how to evaluate witness testimony, and that the State's Attorney had made improper comments during closing argument. This court affirmed the judgment of conviction. See *People v. Hoffstetter*, 203 Ill. App. 3d 755 (1990).

¶ 6 In December 1991, the defendant filed a petition for relief under the Post-Conviction Hearing Act (Ill. Rev. Stat. 1989, ch. 38, ¶ 122-1 *et seq.*). He claimed that the circuit court improperly instructed the jury on armed robbery, that his trial attorney had a

conflict of interest, that the State failed to present adequate proof of his prior criminal convictions at the sentencing hearing, that he was unfit to stand trial at the time of trial, and that trial counsel provided ineffective assistance. In January 1992, the circuit court summarily dismissed the postconviction petition as patently without merit. The defendant appealed. This court affirmed the summary dismissal of the postconviction petition. *People v. Hoffstetter*, No. 5-92-0129 (Dec. 31, 1992) (unpublished order under Supreme Court Rule 23).

¶ 7 In June 2001, the defendant filed a petition for relief from judgment pursuant to section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2000)), which he later supplemented. The defendant's sole claim was that his natural-life sentences were void because they violated due-process principles as elucidated by the United States Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). On motion of the State, the circuit court dismissed the section 2-1401(f) petition. The defendant appealed. This court affirmed. See *People v. Hoffstetter*, No. 5-01-0854 (Feb. 4, 2003) (unpublished order under Supreme Court Rule 23).

¶ 8 On August 25, 2014, the defendant filed another petition for relief from judgment under section 2-1401(f). This petition is the subject of the instant appeal. In this petition, the defendant asserted that the judgment of conviction entered in the underlying criminal case was void in its entirety. The defendant argued that all State's Attorneys are part of the judicial branch of government, and therefore the separation of powers clause of the Illinois Constitution (Ill. Const. 1970, art. II, § 1) is violated every time a State's Attorney prosecutes a criminal case. Because his own criminal case was prosecuted by the State's

Attorney of Madison County, the defendant reasoned, separation of powers was violated, thus depriving the circuit court of "jurisdiction" and rendering the circuit court's judgment of conviction void. The defendant's legal reasoning will be explained more fully in the analysis section of this order.

¶ 9 On November 21, 2014, the circuit court entered a written order denying the defendant's section 2-1401(f) petition, after concluding that the State's Attorney did indeed have authority to prosecute the underlying criminal case and that the circuit court had jurisdiction over that case. The defendant filed a timely notice of appeal, thus perfecting the instant appeal.

¶ 10 As mentioned previously, OSAD has filed in this court a motion for leave to withdraw as the defendant's counsel on appeal, citing *Finley*. OSAD asserts that it has examined the record and has concluded that any argument in favor of reversing the circuit court's order would be without merit. In a memorandum accompanying its withdrawal motion, OSAD explains the reasoning underlying its conclusion. On its own motion, this court provided the defendant with an opportunity to respond to OSAD's motion. The defendant has filed a written response. This court has examined OSAD's motion, the defendant's response, the entire record on appeal, and this court's orders in the defendant's prior appeals.

¶ 11 ANALYSIS

¶ 12 The defendant is appealing from the circuit court's order denying his (second) section 2-1401 petition for relief from judgment, which the defendant filed on August 25, 2014. The petition was denied on the pleading alone, *i.e.*, as a matter of law. Therefore,

appellate review is *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). This court may affirm on any basis in the record, regardless of whether the circuit court relied on that basis or whether its reasoning was correct. *Bjorkstam v. MPC Products Corp.*, 2014 IL App (1st) 133710, ¶ 23.

¶ 13 Section 2-1401 provides a litigant with a means of obtaining collateral relief from a judgment that is older than 30 days. 735 ILCS 5/2-1401(a) (West 2016). Ordinarily, a section 2-1401 petition must be filed within two years after entry of the judgment that is being challenged. 735 ILCS 5/2-1401(c) (West 2016). However, if the petition is brought pursuant to paragraph (f) of section 2-1401 (735 ILCS 5/2-1401(f) (West 2016)) and alleges that the challenged judgment is void, the two-year limitation does not apply. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). A void judgment is a judgment entered by a court that lacked jurisdiction of the subject matter or of the parties. *People v. Castleberry*, 2015 IL 116916, ¶¶ 15-19. A judgment also is void if it is based on a facially unconstitutional statute that is void *ab initio*. *People v. Thompson*, 2015 IL 118151, ¶ 32. A void judgment may be challenged at any time. *Castleberry*, 2015 IL 116916, ¶ 11; *Sarkissian*, 201 Ill. 2d at 103.

¶ 14 Here, the defendant's section 2-1401 petition was brought pursuant to paragraph (f) of that section and alleged that the judgment of conviction entered in 1987 in the underlying criminal case is void. Therefore, the date the petition was filed—August 25, 2014, or just shy of 27 years after the judgment of conviction was entered—is irrelevant.

¶ 15 The defendant's void-judgment claim was premised on the notion that State's Attorneys are part of the judicial branch of Illinois government and therefore not

permitted to exercise the executive power of prosecuting criminal cases without violating separation of powers. The Illinois Constitution's separation of powers clause reads: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. 1970, art. II, § 1.

¶ 16 In support of his assertion that State's Attorneys are part of the judicial branch, the defendant cites to section 19 of article VI of the Illinois Constitution. Article VI is the article on the judiciary. Section 19, which is the final section of article VI, is entitled, "State's Attorneys--Selection, salary". It commands that State's Attorneys are to be elected every four years, permits multiple counties to share a single State's Attorney, specifies United States citizenship and a law license as qualifications to serve as a State's Attorney, and states that a State's Attorney's salary "shall be provided by law." The placement of section 19 within article VI—the article on the judiciary—is the defendant's principal support for the argument that State's Attorneys are part of the judicial branch.

¶ 17 The defendant's reliance on article VI, section 19, completely ignores the other 18 sections of article VI, including section 1, which plainly states, in its entirety: "The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts." Ill. Const. 1970, art. VI, § 1. State's Attorneys are not mentioned in section 1, indicating that no judicial power is vested in them. Sections 2 through 18 of article VI discuss the jurisdiction and organization of the supreme, appellate, and circuit courts, as well as matters such as eligibility to be a judge, terms of office for judges, and court administration. Again, there is no hint that State's Attorneys are part of the judiciary. Our supreme court has stated: "The only connection State's Attorneys have with the

judiciary is that the method of their selection, the qualifications for the office, and the compensation they receive are addressed in the final section of the judicial article of the Illinois Constitution (Ill. Const. 1970, art. VI, § 19)." *Nelson v. Kendall County*, 2014 IL 116303, ¶ 30. The court in *Nelson* made clear that State's Attorneys are part of the executive branch. *Id.* ¶ 31.

¶ 18 The defendant also relies on sections 1 and 15 of article V of the Illinois Constitution as authority for his argument that State's Attorneys are part of the judicial branch. Article V is the article on the executive branch. Section 1 states, in pertinent part: "The Executive Branch shall include a Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller and Treasurer elected by the electors of the State." Ill. Const. 1970, art. V, § 1. Quite plainly, section 1 lists officers that must be included in the executive branch; it does not exclude State's Attorneys from the executive branch. Section 15 reads, in its entirety: "The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law." Ill. Const. 1970, art. V, § 15. Section 15 certainly does not indicate that the Attorney General alone has the power to commence or to prosecute criminal cases.

¶ 19 Because State's Attorneys are part of the executive branch, the state legislature was free to give them the power to commence and to prosecute criminal cases. The legislature did so. Indeed, the legislature imposed a "duty" on every State's Attorney to "commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the State or county may be concerned." Ill. Rev. Stat. 1985, ch. 14, ¶ 5(1) (now codified at 55 ILCS 5/3-

9005(a)(1) (West 2016)). Accordingly, the State's Attorney of Madison County had full authority to commence and to prosecute the underlying criminal case against the defendant.

¶ 20 In his section 2-1401 petition, the defendant asserted that the State's Attorney's lack of authority to prosecute criminal cases deprived the circuit court of "jurisdiction" over his criminal case and rendered the judgment of conviction void. As the circuit court and OSAD noted, the defendant did not develop the jurisdiction aspect of his argument; he did not explain how or why the court would be deprived of jurisdiction over the case.

¶ 21 The circuit court clearly did have jurisdiction over the underlying criminal case. The Illinois Constitution confers upon the circuit courts "original jurisdiction of all justiciable matters", with a few exceptions inapplicable here. Ill. Const., art. VI, ¶ 9. This provision "does not distinguish between civil and criminal cases." *Castleberry*, 2015 IL 116916, ¶ 18. The circuit court acquires jurisdiction over a criminal proceeding upon the filing of a complaint, information, or indictment sufficiently alleging that a crime was committed within the county. *People v. Billings*, 52 Ill. App. 3d 414, 425 (1977). Here, the State's Attorney of Madison County filed an information against the defendant on April 15, 1986. The circuit court acquired jurisdiction over the case at that time. The circuit court also had personal jurisdiction over the defendant, for he personally appeared before the court and pleaded not guilty to the charges against him. See *People v. Woodall*, 333 Ill. App. 3d 1146, 1156 (2002) (a circuit court acquires personal jurisdiction over a criminal defendant when he personally appears before the court and enters a plea). Upon acquiring jurisdiction over the criminal case and the

defendant, the court was free to adjudicate the case and to enter judgment therein. See *Castleberry*, 2015 IL 116916, ¶ 15 (once a circuit court has subject-matter and personal jurisdiction, it may proceed to adjudicate a cause of action and to enter judgment therein). The court's 1987 judgment of conviction certainly was not void.

¶ 22

CONCLUSION

¶ 23 Contrary to the defendant's assertions in his section 2-1401 petition, the State's Attorney had the authority to commence and to prosecute the underlying criminal proceeding, and the circuit court had jurisdiction over the proceeding. The judgment of conviction was perfectly valid, not void. Because the petition failed to set forth a legal basis for relief under section 2-1401(f), and any argument to the contrary would have no merit, OSAD is granted leave to withdraw as appellate counsel and the circuit court's order denying the petition is affirmed.

¶ 24 Motion granted; judgment affirmed.