

No. 1-17-0199

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 06 CR 13027
	)	
ENRIQUE MONTES,	)	Honorable Dennis J. Porter,
	)	Judge Presiding.
Defendant-Appellee.	)	

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JUSTICE GRIFFIN delivered the judgment of the court.  
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court lacked jurisdiction to entertain defendant’s untimely request for relief; order withdrawing defendant’s guilty plea and vacating his convictions vacated.
- ¶ 2 Defendant filed a motion to withdraw his guilty plea more than eight years after the trial court sentenced him. Defendant argued that he was entitled to relief because the trial court and defendant’s trial counsel failed to admonish and advise him about the potential immigration consequences of his guilty plea. The trial court re-characterized defendant’s motion as a 2-1401 petition and ruled that the limitations period for the filing of his 2-1401 petition was tolled due to

the fraudulent concealment of his stated grounds for relief. The trial court then reached the merits of defendant's 2-1401 petition, granted his request for relief and entered an order withdrawing defendant's guilty plea and vacating his convictions. We vacate the trial court's order.

¶ 3

### BACKGROUND

¶ 4 On February 27, 2008, defendant Enrique Montes pleaded guilty to possession of cocaine with intent to deliver (720 ILCS 570/401(c)(2) (West 2016)) and defacing the identification marks of a firearm (720 ILCS 5/24-5 (West 2016)). The trial court accepted defendant's guilty plea and sentenced defendant to 90-days' imprisonment and three years probation. On February 18, 2011, the trial court terminated defendant's probation.

¶ 5 On July 18, 2016, defendant filed a "motion to withdraw defendant's guilty plea" in the trial court, arguing that the trial court was divested with jurisdiction to hear his motion and that both the trial court and his trial counsel failed to admonish and advise defendant about the potential immigration consequences of his guilty plea. Defendant claimed that these failures caused him to suffer prejudice and included an affidavit with his motion, affirming that, had he known about the potential immigration consequences of his plea, defendant would have proceeded to trial. The State failed to file a response.

¶ 6 On October 16, 2016, defendant filed an amended motion arguing that his guilty plea was not knowing or voluntary and therefore void *ab initio*. Again, the State failed to file a response.

¶ 7 On November 16, 2016, the trial court held a hearing and questioned its jurisdiction to hear defendant's amended motion: "You can't file a postconviction because he is not in custody in the penitentiary and a 2-1401 is two years. You're talking ten years ago. I don't think I have jurisdiction." Nevertheless, the trial court granted defendant a continuance to "look into" the trial

court's basis for jurisdiction. Defendant declined the trial court's invitation to include a separate basis for the trial court's jurisdiction in an amended pleading and filed nothing.

¶ 8 On December 13, 2016, the trial court held a second hearing on the same motions that the trial court had already determined it had no jurisdiction to consider. At the hearing, defendant's argument changed course: "[t]he reason we're back here is the last time that we were in court we argued a 1401 motion." Defendant then proceeded to argue that the trial court had jurisdiction to hear his 2-1401 petition because the limitations period for the filing of his petition was tolled due to the trial court and State's fraudulent concealment of the potential immigration consequences of his guilty plea. The trial court agreed.

¶ 9 The trial court re-characterized defendant's request for relief as a 2-1401 petition and ruled that the limitations period for the filing of his 2-1401 petition was tolled due to the fraudulent concealment of the immigration consequences of defendant's guilty plea. The trial court then reached the merits of defendant's 2-1401 petition, granted his requested relief and entered an order withdrawing his guilty plea and vacating his convictions.

¶ 10 The State appeals, arguing that the trial court lacked jurisdiction to hear defendant's untimely motion to withdraw his guilty plea and that the trial court's order is void. Defendant argues that the State waived all of its arguments on appeal by failing to properly object to the trial court's ruling to toll the limitations period for the filing of defendant's 2-1401 petition and its ultimate decision to grant the petition on the merits.

¶ 11 JURISDICTION

¶ 12 On December 13, 2016, the trial court entered on order withdrawing defendant's guilty plea and vacating his convictions. The State filed its notice of appeal on January 12, 2017. In its jurisdictional statement, the State indicated that "[t]his appeal is taken pursuant to Supreme

Court Rule 304(b)(3).” See Ill. S. Ct. R. 304(b)(3) (allowing appeal from judgment granting any of the relief prayed in a petition under section 2-1401). However, in its reply brief, the State changed its position, stating that the jurisdictional basis for its appeal was Illinois Supreme Court Rule 651(a) and that its prior reference to Illinois Supreme Court Rule 304(b)(3) was “an error in the People’s opening brief.” See Ill. S. Ct. R. 651(a) (appeal from final judgment of trial court in any postconviction proceeding shall lie in the appellate court in the district in which the trial court is located).

¶ 13 As a reviewing court, we are obligated to examine the jurisdiction of the trial court in the cause before us. *Cohen v. Salata*, 303 Ill. App. 3d 1060, 1063 (1999) citing *People v. Bounds*, 182 Ill. 2d 1, 3 (1998). We have jurisdiction to consider the State’s appeal. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002); *People v. Bailey*, 2014 IL 115459, ¶ 29 (appellate court may consider trial court’s lack of jurisdiction).

¶ 14 ANALYSIS

¶ 15 The issue on appeal is whether the trial court lacked jurisdiction to entertain defendant’s request for relief. Whether a trial court has jurisdiction is a legal question that we review *de novo*. *In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶ 25.

¶ 16 The State contends that defendant filed an untimely motion to withdraw his guilty plea while defendant argues that he filed a 2-1401 petition. The parties’ distinction is immaterial. The trial court lacked jurisdiction to consider a motion to withdraw a guilty plea or a 2-1401 petition.

¶ 17 First, the trial court lacked jurisdiction to hear a motion to withdraw a guilty plea because defendant filed his request for relief *more than eight years* after the trial court sentenced him. See Ill. S. Ct. R. 604(d) (eff. July, 1 2017); *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 41 (2011) (trial court loses jurisdiction to entertain a motion to withdraw a guilty plea if 30 days

have lapsed since the trial court sentenced the defendant). Second, the trial court lacked jurisdiction to grant a 2-1401 petition because defendant filed his request for relief *more than six years* after the trial court entered the challenged judgment. 735 ILCS 5/2-1401(c) (West 2016) (trial court loses jurisdiction to entertain a 2-1401 petition if two years have lapsed since the trial court entered the challenged judgment). But more importantly, defendant's request for relief failed to provide the trial court with any basis upon which it could have ruled to toll the limitations period for the filing of a 2-1401 petition.

¶ 18 A trial court may toll the two year limitations period if a petitioner clearly shows that he or she was under a legal disability or duress, or that the grounds for relief had been fraudulently concealed. 735 ILCS 5/2-1401(c) (West 2016)). Here, defendant failed to make any showing whatsoever, or even allege any facts, upon which the trial court could have ruled to toll the limitations period for the filing of a 2-1401 petition. Defendant's request for relief does not contain the words, legal disability, duress or fraudulent concealment, let alone demonstrate that his filing delay was attributable to legal disability or duress, or due to the trial court or the State's *intentional* concealment of the potential immigration consequences of his guilty plea. See *People v. Coleman*, 206 Ill. 2d 261, 290 (2002) (to make a successful showing of fraudulent concealment defendant must allege facts demonstrating that his opponent affirmatively attempted to prevent the discovery of the purported grounds for relief and must offer factual allegations demonstrating his good faith and reasonable diligence in trying to uncover such matters before trial or within the limitations period).

¶ 19 We also note that the trial court could not have granted a post-conviction petition. Defendant completed his sentence and was no longer on probation when he filed his request for

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relief. *People v. Vinokur*, 2011 IL App (1st) 090798, ¶ 6 (defendant who is no longer constrained by the State has no standing to file post-conviction petition).

¶ 20 Accordingly, the trial court lacked jurisdiction to entertain defendant's request for relief and its order withdrawing defendant's guilty plea and vacating his convictions is void. See *People v. Flowers*, 208 Ill. 2d 291, 306 (2003) (A trial court's order entered without jurisdiction is void).

¶ 21 **CONCLUSION**

¶ 22 For the foregoing reasons, the trial court's order is is vacated and the cause is remanded with directions to dismiss these proceedings for lack of jurisdiction.

¶ 23 Vacated; cause remanded with directions.