

2018 IL App (2d) 160592-U
No. 2-16-0592
Order filed October 23, 2018

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 00-CF-1704
)	
SHAWN M. BAHRS,)	Honorable
)	George J. Bakalis,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's section 2-1401 petition, as the subsequent vacatur of the convictions that aggravated his DUI conviction did not render the DUI conviction or sentence void or support a claim of actual innocence.

¶ 2 Defendant, Shawn M. Bahrs, appeals the trial court's order denying his section 2-1401 petition (735 ILCS 5/2-1401(a), (f) (West 2016)). He appeals, contending that his conviction of aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2), (d)(1)(A) (West 1998)) is void where two prior DUI convictions that served as the aggravating circumstance for the present conviction have since been vacated. We affirm.

¶ 3 Defendant was convicted in 2000. In 2016, he filed a section 2-1401 petition in which he argued that his conviction was void because two of his prior DUI convictions, which were the aggravating factor in the conviction at issue, had been vacated. Orders to that effect were attached to the petition. The trial court found that the conviction was not void and thus denied the petition. Defendant timely appeals.

¶ 4 Defendant contends that his aggravated DUI conviction is void because the aggravating factor was the prior convictions, which have since been vacated. The State responds that the DUI conviction was not void given that the trial court unquestionably had personal and subject-matter jurisdiction. The prior convictions affected only the sentence and, pursuant to *People v. Castleberry*, 2015 IL 116916, a sentence imposed by a court with jurisdiction cannot be void. The State further contends that any challenge to defendant's sentence is moot because he has completely served it. We agree.

¶ 5 Section 2-1401 provides a procedure to challenge a final judgment more than 30 days after its entry. *People v. Pinkonsly*, 207 Ill. 2d 555, 562 (2003). Generally, a section 2-1401 petition must be filed within two years after the challenged judgment. 735 ILCS 5/2-1401(c) (West 2016). However, a petition attacking a void judgment may be filed at any time. See 735 ILCS 5/2-1401(f) (West 2016).

¶ 6 A judgment is void so as to permit an otherwise untimely collateral attack if the court that entered it lacked personal or subject-matter jurisdiction or if the judgment was based on an unconstitutional statute. *People v. Thompson*, 2015 IL 118151, ¶¶ 31-32. As defendant does not allege that either circumstance was present here, the judgment was not void. At most, defendant alleges circumstances that might have affected his sentence. However, as the State points out, a

sentence handed down by a court with jurisdiction is not void. *Castleberry*, 2015 IL 116916, ¶¶ 16-18 (abolishing the “void sentence” rule). Thus, defendant’s sentence was not void.

¶ 7 Although casting his argument primarily in terms of voidness, defendant appears to raise a claim of actual innocence based on newly discovered evidence. See *People v. Boclair*, 202 Ill. 2d 89, 102 (2002) (claims of actual innocence based on newly discovered evidence can be raised in a section 2-1401 petition). However, this claim, too, must fail.

¶ 8 There is essentially only one offense of DUI. The various aggravating factors affect only the sentence. In *People v. Quigley*, 183 Ill. 2d 1, 10 (1998), the court explained:

“[A]ggravated DUI occurs when an individual commits some form of misdemeanor DUI, in violation of paragraph (a), and other circumstances are present. The legislature added aggravating factors that change the misdemeanor DUI to a Class 4 felony. The essential and underlying criminal act, however, remains the same: driving while under the influence.”

¶ 9 Defendant does not dispute that the State proved him guilty of DUI. The subsequent vacation of the earlier DUI convictions would have affected only the sentence defendant received. However, defendant has long since completed that sentence, making any challenge to it moot. See *People v. Roberson*, 212 Ill. 2d 430, 435 (2004) (where appeal involves validity of a sentence, it is moot if the sentence has been served).

¶ 10 The judgment of the circuit court of Du Page County is affirmed. As part of our judgment, we grant the State’s request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 20/16); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 11 Affirmed.