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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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|                         |   |                               |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE | ) | Appeal from the Circuit Court |
| OF ILLINOIS,            | ) | of De Kalb County.            |
|                         | ) |                               |
| Plaintiff-Appellee,     | ) |                               |
|                         | ) |                               |
| v.                      | ) | No. 01-CF-272                 |
|                         | ) |                               |
| ANTESHIA A. LEE,        | ) | Honorable                     |
|                         | ) | Robbin J. Stuckert,           |
| Defendant-Appellant.    | ) | Judge, Presiding.             |

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JUSTICE BURKE delivered the judgment of the court.  
Presiding Justice Hudson and Justice Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly dismissed defendant's section 2-1401(b-5) petition as untimely: defendant filed her petition more than two years after her sentence, that limitations period was not tolled, and section 2-1401(b-5) was not retroactive.

¶ 2 Defendant, Anteshia A. Lee, appeals from the judgment of the circuit court of De Kalb County dismissing her petition for relief from judgment (see 735 ILCS 5/2-1401 (West 2016)) as untimely and without merit. Because the trial court did not err in dismissing the petition as untimely, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Following a jury trial in January 2002, defendant was found guilty of first-degree murder (see 720 ILCS 5/9-1(a)(1) (West 2000)) and sentenced to 29 years in prison. On appeal, defendant challenged only her conviction. We affirmed. See *People v. Lee*, No. 2-02-0266 (2003) (unpublished order under Illinois Supreme Court Rule 23).

¶ 5 Because we detailed the facts from the trial when we affirmed defendant's conviction, we set out only the basic background here. On May 12, 2001, defendant was involved in an altercation with Antonio Cureton at a convenience store. Although defendant knew Cureton, she was not in a relationship with him. During the incident, defendant stabbed Cureton once in the chest, killing him. Although defendant argued at trial that she acted in self-defense, the jury found her guilty.

¶ 6 At sentencing, defendant contended that she should be sentenced at the lower end of the statutory range, because she stabbed the victim only once and she did not believe that death would result. Defendant never raised any claim that she had been the victim of domestic violence.

¶ 7 On April 10, 2017, defendant filed her petition. She relied on amendments to section 5-3.1 of the Unified Code of Corrections (see 730 ILCS 5/5-3.1(a)(15) (West 2016)) and section 2-1401 of the Code of Civil Procedure (see 735 ILCS 5/2-1401(b-5) (West 2016)), both of which had taken effect on January 1, 2016. She alleged that, between approximately 1997 and 2000, she had been the victim of domestic violence at the hands of her former boyfriend, Tod Todd, and that the effects of that violence tended to excuse or justify her stabbing the victim.

¶ 8 In her petition, defendant detailed the domestic violence. According to defendant, she moved in with Todd in the summer of 1997 and they had a three-year relationship. During their

relationship, Todd would physically and mentally abuse her. She did not realize the true nature and impact of the abuse until she participated in classes and therapy groups in prison.

¶ 9 Attached to the petition was Todd's affidavit. He stated, among other things, that he physically abused defendant and that his sister called the police several times. According to Todd, defendant was too afraid and traumatized to follow through on the police reports.

¶ 10 The trial court conducted a hearing on defendant's petition. The court ruled that section 5-5-3.1(a)(15) and section 2-1401(b-5) did not apply retroactively to defendant's claim of domestic violence. The court also found that defendant failed to show that she was under any legal disability or duress or that the grounds for relief had been fraudulently concealed such that the general two-year time limitation under section 2-1401 (735 ILCS 5/2-1401(c) (West 2016)) should be extended. The court further found that the allegations of domestic violence were not conclusive enough that they would likely have changed the sentence. Thus, the court dismissed the petition. Defendant then filed this timely appeal.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant contends that (1) section 2-1401(b-5) should apply retroactively, because it created a new "substantive procedure" by which victims of past domestic violence can seek resentencing; (2) the legislature intended that section 2-1401(b-5) be applied retroactively to claims such as hers; (3) the general two-year limit in section 2-1401(c) should not bar her claim, because she could not have brought her claim any sooner, as section 5-5-3.1(a)(15) and section 2-1401(b-5) did not take effect until January 1, 2016, and she did not realize the impact of the domestic violence until she participated in classes in prison; and (4) the evidence of the domestic violence was so conclusive that it was likely to have resulted in a less-severe sentence.

¶ 13 We first address whether the amendment in section 2-1401(b-5) applies retroactively. It does not.

¶ 14 Section 2-1401(b-5) provides, in part, that a defendant may present a meritorious claim if she establishes that: (1) she was convicted of a forcible felony; (2) her participation in the offense was related to her being a victim of domestic violence; (3) no evidence of domestic violence was presented at the sentencing hearing; (4) she was unaware of the mitigating nature of the domestic violence and could have learned of its significance sooner through diligence; and (5) the new evidence is material, noncumulative, and so conclusive that it likely would have changed the sentence. 735 ILCS 5/2-1401(b-5) (West 2016).

¶ 15 Relying primarily on *People v. Davis*, 2014 IL 115595, defendant maintains that section 2-1401(b-5) created a new substantive rule that must be applied retroactively to her claim. Defendant's reliance on *Davis*, however, is misplaced.

¶ 16 In *Davis*, our supreme court decided whether the constitutional prohibition against imposing on a juvenile a mandatory life sentence without parole, as announced in *Miller v. Alabama*, 567 U.S. 460 (2012), applied retroactively on collateral review of a final conviction. *Davis*, 2014 IL 115595, ¶¶ 34-41. It held that *Miller* applied retroactively, because it created a new substantive rule that categorically prohibited certain defendants from being subjected to a particular sentence. *Davis*, 2014 IL 115595, ¶¶ 38-39.

¶ 17 Here, section 2-1401(b-5) does not constitute a new constitutional rule. Rather, it is a statutory amendment. Thus, the reasoning of *Davis* does not apply. Even if it did, section 2-1401(b-5) does not categorically prohibit the imposition of a particular sentence because a defendant was a victim of domestic violence. Rather, it merely allows, under certain circumstances, for a defendant to present mitigating evidence of domestic violence. Such

evidence does not categorically bar a particular sentence, but instead simply creates the potential for the sentencing court, based upon all relevant sentencing factors, to impose a less-severe sentence. Thus, section 2-1401(b-5) does not create a new substantive rule requiring retroactive application.

¶ 18 Defendant alternatively contends that the legislature, by amending section 2-1401 to allow a defendant to seek a new sentence based on domestic violence, intended that the amendment apply retroactively to a claim such as hers. It did not.

¶ 19 The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 394-95 (2003). The best indicator of legislative intent is the plain and ordinary meaning of the statutory language. *Krohe*, 204 Ill. 2d at 395. Where the language is clear and unambiguous, we must apply the statute without resort to further aides of statutory construction. *Krohe*, 204 Ill. 2d at 395. If the statutory language is ambiguous, however, we may look to other sources, such as legislative history, to ascertain the legislature's intent. *Krohe*, 204 Ill. 2d at 395. Nonetheless, when reviewing a statute, we also consider the subject it addresses and the legislature's apparent objective in enacting it, while presuming that the legislature did not intend to create absurd, inconvenient, or unjust results. *Fisher v. Waldrop*, 221 Ill. 2d 102, 112 (2006).

¶ 20 Section 5-5-3.1(a)(15) added a new mitigating factor. 730 ILCS 5/5-5-3.1(a)(15) (West 2016). That factor applies when “[a]t the time of the offense, the defendant is or had been the victim of domestic violence and the effects of the domestic violence tended to excuse or justify the defendant’s criminal conduct.” 730 ILCS 5/5-5-3.1(a)(15) (West 2016). Facially, section 5-5-3.1(a)(15) says nothing about retroactive application.

¶ 21 However, the legislature, in amending section 2-1401 to include a claim under section 5-5-3.1(a)(15), clearly intended to allow certain defendants to seek relief after their sentences had already been imposed. However, that opportunity was limited necessarily by the time constraints under section 2-1401(c). That the legislature expressly made section 2-1401 the sole procedural vehicle in which a defendant could bring a claim under section 5-5-3.1(a)(15) demonstrates an unequivocal intent to limit the retroactivity of section 5-5-3.1(a)(15).

¶ 22 Further, the legislative history supports our interpretation. During the third reading of Senate Bill 209, Representative Mitchell stated that the amendments would give a sentencing judge the option to provide postjudgment relief for “up to two years after the original sentencing.” 99th Ill. Gen. Assem., House Proceedings, May 25, 2015, at 29 (statements of Representative Mitchell). Representative Mitchell added that the amendments provided an “option to deal with *some* of these folks inside the system” (emphasis added). 99th Ill. Gen. Assem., House Proceedings, May 25, 2015, at 29 (statements of Representative Mitchell). Those comments show a clear intent to limit claims for postsentencing relief to the time constraints present in section 2-1401(c) and not to open it up to *all* defendants irrespective of when their judgments became final. Thus, the legislature did not intend to make section 5-5-3.1(a)(15) retroactive beyond the time limits in section 2-1401(c).

¶ 23 We next address whether defendant’s petition was timely under section 2-1401(c). It was not.

¶ 24 Relief under section 2-1401 is generally limited to two years after judgment. 735 ILCS 5/2-1401(c) (West 2016). Here, defendant sought relief against a judgment that was entered well outside of the two-year limitation.

¶ 25 However, the time during which a person seeking relief is under legal disability or duress, or the ground for relief is fraudulently concealed, shall be excluded in calculating the two-year period. 735 ILCS 5/2-1401(c) (West 2016). Accordingly, defendant contends that she was unable to bring her claim within two years of sentencing, because the amendments were not effective until January 1, 2016, and because she did not realize the impact of the domestic violence until she participated in prison classes and therapy. That contention is not persuasive.

¶ 26 The record does not indicate that defendant was under any cognizable legal disability. Indeed, she does not contend that she could not bring her claim because of her mental incompetence or minority. See *Morgan v. People*, 16 Ill. 2d 374, 376 (1959); *Spoto v. Rayborn*, 32 Ill. App. 3d 913, 915 (1975).

¶ 27 Instead, defendant asserts that she is entitled to seek relief under section 2-1401 because she was under a legal disability until the amendments were enacted and she discovered the impact of the domestic violence during prison classes. We disagree. If legal disability included the absence of a statute or amendment thereto, the temporal limits of section 2-1401(c) would be effectively eradicated. Nor did defendant's belated discovery of the impact of the domestic violence constitute a legal disability within the meaning of section 2-1401(c). Even had she known of the impact of the domestic violence earlier, she could not have raised the claim until the law was changed.

¶ 28 We further note that the record does not show any fraudulent concealment that prevented defendant from bringing her claim sooner. To successfully show fraudulent concealment, a petitioner must allege facts demonstrating that her opponent affirmatively prevented the discovery of the purported ground for relief and show her good faith and reasonable diligence in trying to uncover such grounds. *People v. Coleman*, 206 Ill. 2d 261, 290 (2002). Defendant here

has not alleged, nor does the record show, any fraudulent concealment by the State. Thus, that is no basis for expanding the two-year time limit under section 2-1401.

¶ 29

### III. CONCLUSION

¶ 30 For the reasons stated, we affirm the judgment of the circuit court of De Kalb County. 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 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 31 Affirmed.