

**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).

2018 IL App (4th) 160257-U

NO. 4-16-0257

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

September 24, 2018

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Piatt County
KEITH E. OWENS,	)	No. 10CF42
Defendant-Appellant.	)	
	)	Honorable
	)	Roger B. Webber,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.  
Justices Knecht and DeArmond concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) A circuit court’s jurisdiction does not depend on providing the defendant a speedy trial.

(2) A plea of guilty waives or forfeits the defendant’s constitutional and statutory rights to a speedy trial.

¶ 2 The Piatt County circuit court denied a petition by defendant, Keith E. Owens, for relief from judgment. See 735 ILCS 5/2-1401 (West 2012). He appeals. The office of the state appellate defender (appellate counsel) moves to withdraw from representing defendant in this appeal, because appellate counsel does not believe that any reasonable argument could be made in support of this appeal, as appellate counsel explains in a supporting memorandum. See *People v. Meeks*, 2016 IL App (2d) 140509, ¶¶ 8-9. Defendant and the State both have filed briefs. After reviewing the briefs and the record, we agree with appellate counsel’s assessment of the merits

of this appeal. Therefore, we grant appellate counsel's motion to withdraw, and we affirm the judgment.

¶ 3

### I. BACKGROUND

¶ 4 On September 30, 2010, the State charged defendant, by information, with two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)).

¶ 5 On December 14, 2010, defendant filed a motion to dismiss the charges on speedy-trial grounds because he had been in custody for more than 120 days. See 725 ILCS 5/103-5(a) (West 2006). He alleged that the Piatt County sheriff's office arrested him on August 25, 2007, for the two charged offenses of predatory criminal sexual assault of a child and that he "ha[d] not been released to bail upon said charges since that date and in fact [had] remain[ed] incarcerated on said charges." He attached to his motion a probable-cause affidavit, which showed he was indeed arrested on August 25, 2007, for "[p]redatory [c]riminal [s]exual [a]ssault," among other offenses.

¶ 6

On December 20, 2010, the State filed a response, which acknowledged that on August 25, 2007, an investigator with the Piatt County sheriff's office arrested defendant for sexual offenses. The State represented, however, that on September 10, 2007, defendant was released from the custody of Piatt County, without pending charges, and that he was taken into the custody of Shelby County to face criminal proceedings there. The State further represented that although the present charges were filed against defendant in Piatt County on September 30, 2010, at no time after September 10, 2007, was he ever in the custody of Piatt County. (On October 18, 2010, the Piatt County circuit court issued a *habeas corpus* order, directing the Shelby County sheriff to deliver defendant to the Piatt County courthouse for a court appearance.)

¶ 7 On December 21, 2010, the Piatt County circuit court denied defendant's motion for dismissal.

¶ 8 On December 30, 2010, in this case, defendant entered a negotiated plea of guilty to amended count I, which charged him with aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2006)). The State dismissed the remaining count of the information. Pursuant to the plea agreement, the Piatt County circuit court sentenced defendant to seven years' imprisonment.

¶ 9 On November 26, 2013, defendant filed a motion for relief from judgment. See 735 ILCS 5/2-1401 (West 2012). The motion claimed that the judgment entered on his guilty plea was "void" on speedy-trial grounds.

¶ 10 On March 22, 2016, for two reasons, the Piatt County circuit court denied defendant's section 2-1401 motion. First, the court found that defendant was not in the custody of Piatt County for the entire three years he was dealing with the charges in Shelby County and, hence, there was no speedy-trial violation in the Piatt County case. Second, the court held that even if there were a speedy-trial violation, defendant waived the violation by pleading guilty.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 When a party appeals the ruling on a section 2-1401 petition, our standard of review is *de novo*. *People v. Bradley*, 2017 IL App (4th) 150527, ¶ 13. In our *de novo* review, we conclude that the Piatt County circuit court was correct to deny defendant's petition for relief from judgment. The petition makes a claim that is flatly inconsistent with case law from the supreme court and this court.

¶ 14 The supreme court has held: "[T]he right conferred by the [speedy-trial] statute is not absolute in the sense that the mere passage of time ousts the court of jurisdiction to try the

accused and makes his release mandatory. [Citations.] Further, it was long ago established that the right to discharge granted by the statute was waived if not asserted by the defendant prior to conviction.” *People v. Pearson*, 88 Ill. 2d 210, 216 (1981). A judgment is void only if it was (1) entered by a court that lacked jurisdiction or (2) based on an unconstitutional statute. *People v. Price*, 2016 IL 118613, ¶ 31. Defendant does not claim that the statute criminalizing aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2006)) is unconstitutional. And in *Pearson*, the supreme court rejected the theory that the speedy-trial statute is jurisdictional. *Pearson*, 88 Ill. 2d at 216.

¶ 15 Even if defendant’s right to a speedy trial was violated, the violation did not deprive the Piatt County circuit court of jurisdiction and did not make the judgment void. See *id.* The court retained jurisdiction, and defendant waived or forfeited any violation of the speedy-trial statute by pleading guilty. See *id.* The supreme court has plainly stated: “[T]he right to a speedy trial [is] waived by a plea of guilty.” *People v. De Cola*, 15 Ill. 2d 527, 530 (1959). Likewise, this court has stated: “A plea of guilty waives the defendant’s constitutional and statutory rights to a speedy trial.” *People v. Burt*, 5 Ill. App. 3d 333, 334 (1972). For such a waiver or forfeiture to occur, the trial court would have to have jurisdiction over the case and over the defendant.

¶ 16 III. CONCLUSION

¶ 17 For the foregoing reasons, we grant appellate counsel’s motion to withdraw, and we affirm the trial court’s judgment. We award the State its statutory assessment of \$50 (55 ILCS 5/4-2002(a) (West 2016)).

¶ 18 Affirmed.