

NOTICE
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2018 IL App (5th) 160235-U

NO. 5-16-0235

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,)	Randolph County.
)	
v.)	No. 08-CF-227
)	
CURTIS WILEY,)	Honorable
)	Richard A. Brown,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court.
Justices Chapman and Overstreet concurred in the judgment.

ORDER

- ¶ 1 *Held:* As the defendant did not show evidence to provide for the tolling of the two-year statute of limitations for filing a section 2-1401 petition for relief from judgment, dismissal of his petition is affirmed.
- ¶ 2 The defendant, Curtis Wiley, appeals *pro se* the circuit court's dismissal of his petition for relief from judgment which was filed outside of the two-year limitations period. Because no evidence was presented to the court that would provide for tolling of the two-year limitations period, we affirm.

¶ 3

BACKGROUND

¶ 4 On March 12, 2009, the defendant pled guilty to criminal sexual abuse. He was fined \$1000 and ordered to register as a sex offender for a period of 10 years.

¶ 5 On March 1, 2016, the defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). The defendant alleged that he was innocent in that he believed that the victim was of the age of consent; that he pled guilty upon the advice of counsel only because he wanted to avoid a prison sentence; that the victim fabricated her story and that the police told witnesses not to speak with him; and that his attorney failed to depose those witnesses. He also alleged that the grounds for relief had been fraudulently concealed, that he had been under legal disability, and that he demonstrated due diligence by performing legal research and filing the petition on his own. In support of his claim of innocence, he supplied affidavits from himself, Justin Raban, and Patrick Sommer.

¶ 6 In response, the State filed a special and limited entry of appearance to contest jurisdiction, arguing that the petition was barred by the two-year limitations period and seeking dismissal thereof. The trial court granted the State's motion and dismissed the petition, finding that it was untimely. The defendant's motion to reconsider was denied and he filed this timely appeal.

¶ 7

ANALYSIS

¶ 8 On appeal, the defendant presents the issue as being "whether the merits of this petition, and supporting affidavits, would grant [the circuit court] jurisdiction over [his]

sec[ti]on 2-1401 petition, and subsequently allow [the circuit court] to grant the relief prayed for within it."

¶ 9 Section 2-1401 of the Code of Civil Procedure provides a mechanism to collaterally attack a "final judgment older than 30 days." *People v. Vincent*, 226 Ill. 2d 1, 7 (2007) (citing 735 ILCS 5/2-1401 (West 2002)). "[T]he petition must be filed not later than 2 years after the entry of the order or judgment. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years." 735 ILCS 5/2-1401(c) (West 2016). The two-year limitations period does not apply where the defendant alleges that the judgment is void. *Id.* § 2-1401(f). This court reviews the dismissal of a section 2-1401 petition *de novo*. *People v. Bradley*, 2017 IL App (4th) 150527, ¶ 13.

¶ 10 The defendant did not allege that his judgment of conviction was void. Instead, he alleged that he was under a "legal disability or duress" and that evidence was "fraudulently concealed."

¶ 11 A "person suffers from a 'legal disability' where he or she is 'entirely without understanding or capacity to make or communicate decisions regarding his [or her] person and totally unable to manage his [or her] estate or financial affairs.'" *In re Doe*, 301 Ill. App. 3d 123, 126-27 (1998) (quoting *Estate of Riha v. Christ Hospital*, 187 Ill. App. 3d 752, 756 (1989)). "In a case where a legal disability is alleged, the record must contain sufficient allegations of fact from which one could conclude that the person seeking to be found legally disabled was incompetent or suffered from serious mental disorder which made that person entirely without understanding or capacity to make or

communicate decisions regarding his person and totally unable to manage his estate or financial affairs." *Id.* at 127 (citing *Sille v. McCann Construction Specialties Co.*, 265 Ill. App. 3d 1051, 1055 (1994)). In this case, the defendant did not allege any facts suggesting that he was incompetent or lacked understanding or capacity to make decisions. The circuit court correctly determined that the defendant did not suffer from a legal disability that would toll the running of the two-year limitations period.

¶ 12 "Under the fraudulent concealment exception ***, the defendant must allege facts demonstrating his opponent affirmatively attempted to prevent the discovery of the purported grounds for relief ***." *People v. McDonald*, 405 Ill. App. 3d 131, 138 (2010). In a criminal case, the defendant's opponent is the State. *Id.* Concealment by a witness of the witness's false testimony will not toll the running of the two-year limitations period because a witness is not the defendant's opponent. Instead, the defendant must show that the State attempted to conceal the falsity of the witness's testimony. *Id.*

¶ 13 In the current case, the defendant attempts to argue, as he previously argued, that he believed the victim was of the age of consent and that she fabricated her story. He does not allege that the State knew that the victim was lying and that it attempted to conceal this fact from him. Although he alleges that police told witnesses not to talk to him, he does not allege that the identities of those witnesses were concealed. The defendant knew that Raban, Sommer, and the victim were at the party where the offense occurred. In fact, the defendant's own attorney subpoenaed Raban twice prior to the entry

of his plea. The defendant failed to show that his claimed grounds for relief were fraudulently concealed.

¶ 14 Because the defendant failed to show that he was under legal disability or duress or that the grounds for relief were fraudulently concealed, the circuit court properly dismissed his section 2-1401 petition as being untimely. Timeliness aside, the defendant's claims are substantively meritless.

¶ 15 Claims of actual innocence based on newly discovered evidence can be raised in a section 2-1401 petition. *People v. Bocclair*, 202 Ill. 2d 89, 102 (2002). "[N]ewly discovered evidence warrants a new trial when (1) it has been discovered since trial; (2) it is of such a character it could not have been discovered prior to trial by the exercise of due diligence; (3) it is material to the issue and not merely cumulative; and (4) it is of such a conclusive character it will probably change the result on retrial. [Citation.]" *People v. Davis*, 2012 IL App (4th) 110305, ¶ 26.

¶ 16 As noted above, the defendant claimed that he was innocent because he believed the victim to be of the age of consent, and in support of this claim, he attached to his petition the affidavits of himself, Justin Raban, and Patrick Sommer. Generally, these affidavits allege that when they arrived at a party at Sommer's residence, Raban and the defendant asked if everyone was "of age." Destinn Ywlkowski, a friend of the victim's, said that they were. Raban was previously subpoenaed by the defense, so testimony provided by him would not be newly "discovered." Further, upon review of the affidavits provided by Raban and Sommer, and the reply to the State's motion for discovery provided by the defense, their testimony would have been cumulative to that which was

provided by Destinn—that the victim never indicated (to their limited personal knowledge) that she was less than 17 years of age. Because the evidence the defendant relies upon to support his claim of actual innocence is neither newly discovered nor noncumulative, his actual innocence claim fails.

¶ 17

CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Randolph County is affirmed.

¶ 19 Affirmed.