2019 IL App (2d) 180313-U
No. 2-18-0313
Order filed March 12, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. JACOB R. LAWFER, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Carroll County. No. 16-TR-1137 Honorable J. Jerry Kane, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Birkett and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Because defendant failed to allege the existence of a meritorious defense in his petition for relief from judgment, the trial court abused its discretion by vacating his guilty plea. Reversed.

¶ 2 Defendant, Jacob R. Lawfer, filed a petition seeking to vacate his guilty plea on a speeding citation pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2016)). Following an evidentiary hearing, the trial court granted defendant's petition and vacated his guilty plea. The State appeals, arguing that the trial court abused its discretion. We agree with the State.

¶ 3 I. BACKGROUND

¶ 4 On July 3, 2016, defendant received a speeding citation in Carroll County for driving 70 miles per hour in a 55-mile-per-hour zone. On July 12, 2016, defendant signed the back of the citation, thereby agreeing to (1) waive his right to a trial, (2) plead guilty to the offense, and (3) "pay the penalty required." The signed citation was filed in the circuit court on July 20, 2016.

¶ 5 On April 11, 2018, defendant filed a "Motion for Relief from Judgment Pursuant to 5/2-1401 and/or Motion to Withdraw Guilty Plea." Defendant alleged that he "sent in the ticket with the payment without the aid of legal counsel and without any knowledge of what the disposition of his guilty plea would be and/or what potential collateral consequences could be on his driving privileges." He further alleged that he "never appeared in court and thus was never admonished." Defendant explained that he received a second speeding citation in Iowa in February 2018, which he "handled in a similar manner to the Illinois citation." Because the two citations were issued within 24 months of each other, the Illinois Secretary of State suspended defendant's driving privileges for 90 days. This was problematic because defendant had been offered a summer job, scheduled to begin on May 8, 2018, which required on-the-job driving. Defendant alleged that he would lose the job if the suspension remained in place. Although he made no allegations relating to the existence of a meritorious defense to the underlying Illinois speeding citation, defendant nonetheless asked the trial court to vacate his guilty plea and "sentence of 'conviction.' "

¶ 6 The parties appeared in the trial court on April 16, 2018. The court suggested that it was "too late" for a motion to withdraw defendant's guilty plea. Defense counsel said he could provide case law establishing that a criminal defendant can always move to withdraw his plea on the basis that he was never admonished about the consequences of pleading guilty. Counsel

acknowledged, however, that he had no case law applying this rule to an "over-the-counter" guilty plea on a traffic citation. Turning to the requirements under section 2-1401 of the Code, the court asked whether defendant intended to file any supporting affidavits. Counsel answered this question in the negative, stating that the only support would come from defendant's own testimony. When the court advised the State that it was entitled to file a written response to defendant's motion, defense counsel stated that the issue would be moot unless it was resolved before May 8, 2018, when defendant was scheduled to begin his summer job. When the prosecutor stated that he was "just going to argue," the court agreed to proceed immediately to an evidentiary hearing.

¶ 7 Defendant testified that he was currently attending Iowa State University, but he maintained his Illinois mailing address at his parents' home outside Stockton. On July 3, 2016, he was "following a string of cars" with a motorcycle behind him when he was pulled over for speeding in Carroll County. He testified that he could not recall many details from the stop. He remembered only telling the officer that he "didn't necessarily know" how fast he was driving and the officer "just proceeded to give [him] a ticket." At this point in defendant's testimony, the following colloquy took place:

> "Q. [Defense counsel]: Okay. And when you got the ticket what did you ultimately do?
>
> A. [Defendant]: I came into this building and gave it—I was writing out my check and I asked them if I could—
>
> Q. [Defense counsel]: When you say them, where did [you] go? To the Clerk's Office here—
>
> A. [Defendant]: Yes.
>
> Q. [Defense counsel]: —in the Carroll County Courthouse?

A. [Defendant]: Yes

Q. [Defense counsel]: Okay. And—and what was the exchange there?

A. [Defendant]: I asked them if I could fight this for insurance purposes because I was a high school kid at the time and they said I didn't have—I couldn't due to the fact that I had a CDL at the time.

Q. [Defense counsel]: Okay. Did you have a CDL at the time?

A. [Defendant]: No. It was just the permit.

Q. [Defense counsel]: Okay. And so is it accurate—

THE COURT: Can we back up one second? Who—who—who told you this?

A. [Defendant]: The lady at the front desk of the Circuit Clerk.

THE COURT: Okay. All right. Go ahead. I'm sorry.

Q. [Defense counsel]: Okay. So the conversation involved something to the effect that there was nothing that could be done other than a plea of guilty because there's a CDL involved; correct?

A. [Defendant]: Correct.

Q. [Defense counsel]: So you paid the ticket; correct?

A. [Defendant]: Yeah."

Defendant went on to testify that, after he paid for the Iowa speeding citation in early 2018, the Illinois Secretary of State sent a notice of his suspension to his home address in Illinois. Upon learning of the suspension, defendant investigated the possibility of obtaining a work-related driver's permit. After concluding that he would be unable to obtain any such permit in time to begin his summer job, he sought out and retained the assistance of his defense counsel.

¶ 8 Before hearing arguments, the trial court indicated its belief that defendant's motion to withdraw his guilty plea was untimely. The court stated that it was more focused on defendant's request for relief under section 2-1401 of the Code. Defense counsel argued that, if defendant had received court supervision for the Illinois speeding citation, then the Iowa speeding citation would not have resulted in a suspension of his driving privileges. Counsel conceded, however, that when defendant signed the back of the Illinois speeding citation, he was unaware of the possibility of receiving a sentence of court supervision. Counsel nonetheless argued that the courthouse employee had effectively deprived defendant of an opportunity to learn about his options and make an informed decision. When the prosecutor pointed out that defendant had alleged nothing to establish the existence of a meritorious defense to the underlying speeding citation, the trial court interjected and stated:

> "Well, but the testimony I took was you know what, we were—I was at the back of the train of cars and maybe my car wasn't the one the radar hit. I don't know. I think that's what he was saying."

Defense counsel endorsed the trial court's suggestion but the prosecutor disagreed, noting defendant's acknowledgment that he did not know how fast he was driving.

¶ 9 On April 18, 2018, the trial court issued a written memorandum of decision granting defendant's requested relief under section 2-1401 of the Code. The court found in pertinent part:

> "Without question, the Defendant's Motion for Relief from Judgment was filed within two-years as required under 2-1401. However, the need to proceed diligently is still required. The fact that the defendant was 18 years-of-age at the time he plead (*sic*) guilty and did not seek legal counsel prior to entering the guilty plea over the counter does not resolve the diligence factor in his favor. However, the testimony that the

> Defendant spoke with someone at the Circuit Clerk's Office and, based on that conversation, decided to forego (*sic*) his right to plead not guilty, [and] give up his right to confront the witnesses against him at a trial is concerning to the court. The reasonable inference from the pleadings and Defendant's testimony is that, after being informed of his license suspension, the Defendant sought counsel and at that time determined there could be a defense to his case which resulted in the filing of the 2-1401 Motion. Keep in mind the Defendant must prove the allegations and other requirements of Section 2-1401 by a preponderance of the evidence. Applying the principles stated above to this case, I conclude that the Defendant has proven that his 2-1401 Motion was filed within two-years, that he has a defense to the traffic citation that could be litigated at trial and that, under the facts of this case, he was diligent. Therefore, the Court grants the Defendant's 2-1401 motion."

As a result of these findings, the trial court vacated defendant's guilty plea and ordered defense counsel to schedule a hearing date for further proceedings. In closing, the court noted that it had not ruled on defendant's motion to withdraw his guilty plea.

¶ 10 The State filed a timely notice of appeal under Illinois Supreme Court Rule 304(b)(3). Ill. S. Ct. R. 304(b)(3) (eff. March 8, 2016) (allowing an appeal from a final judgment that grants or denies any of the relief requested in a petition brought under section 2-1401 of the Code).

¶ 11 II. ANALYSIS

¶ 12 We note at the outset that defendant has not filed an appellee's brief. We therefore apply the principles of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976), in which our supreme court explained that reviewing courts have three options under these circumstances. First, if justice requires, then the reviewing court may advocate for the

appellee and search the record for the purpose of sustaining the trial court's judgment. Second, if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, then the reviewing court should decide the merits of the appeal. Third, the trial court's judgment may be reversed if the appellant's brief demonstrates *prima facie* reversible error and the appellant's contentions find support in the record. *Id*. at 133. As we will explain, the third option from *Talandis* applies here.

¶ 13 Section 2-1401 of the Code creates a comprehensive statutory procedure for obtaining relief from final orders and judgments more than 30 days after their entry. *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶ 22. The petition must be supported by an affidavit or other appropriate showing as to matters not of the record, and it must be filed no later than two years after the entry of the contested order or judgment. *Id*. ¶ 23; 735 ILCS 5/2-1401(b) (West 2016). To be entitled to relief under section 2-1401, the petitioner must set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the petition. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220 (1986). The quantum of proof necessary to sustain the petition is a preponderance of the evidence. *Id*. at 221.

¶ 14 Our standard of review depends on whether defendant has presented a factual or legal challenge to a final judgment or order. *Warren County Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶ 31. If a petition raises a purely legal issue that does not involve a factual dispute, then equitable circumstances are inapplicable and there is no need for the petitioner to establish a meritorious defense or satisfy the due diligence requirements. *Id*. ¶¶ 47-48. If the trial court enters judgment on the pleadings or dismissal for failure to state a cause of action, then the reviewing court should apply a *de novo* standard of review. *Id*. However, if a

section 2-1401 petition raises a fact-dependent challenge to a final judgment which requires a consideration of the equities underlying the case, then the trial court's ruling should be reviewed for an abuse of discretion. *Id.* ¶ 50. In the context of a section 2-1401 petition, a trial court abuses its discretion "if it fails to apply the proper criteria when it weighs the facts." *People v. Ortega*, 209 Ill. 2d 354, 360 (2004).

¶ 15 Here, we agree with the State that defendant has presented a fact-based petition calling into question the equities underlying the 90-day suspension of his driving privileges. We therefore review the trial court's ruling for an abuse of discretion.

¶ 16 The State contends that the trial court abused its discretion by vacating defendant's guilty plea based on (1) insufficient allegations and (2) insufficient evidence. We can dispose of the first issue rather quickly. As with complaints generally, when the opposing party elects to forgo filing a motion attacking the sufficiency of a section 2-1401 petition and instead answers on the merits, the opposing party is deemed to have waived any challenge to the petition's sufficiency, and the petition will be treated as properly stating a cause of action. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). Here, the State waived any challenge to the sufficiency of defendant's section 2-1401 petition when the prosecutor acquiesced to defense counsel's request to proceed immediately to an evidentiary hearing. Our review is therefore limited to the sufficiency of the evidence that was presented during the evidentiary hearing.

¶ 17 The State first argues that defendant failed to satisfy the due diligence requirements for a successful section 2-1401 petition. We note, however, that courts may relax the due diligence standards for fact-based section 2-1401 petitions based on equitable considerations. *Warren County Soil*, 2015 IL 117783, ¶ 51. Thus, even accepting the State's argument that defendant's

diligence was somehow lacking in this case, we cannot say that the trial court abused its discretion by relaxing the due diligence requirements based on equitable considerations.

¶ 18 The central issue in this appeal is whether defendant established the existence of a meritorious defense to the underlying Illinois speeding citation. Defendant's written allegations were that he signed the back of the citation "without the aid of legal counsel and without any knowledge of what the disposition of his guilty plea would be and/or what potential collateral consequences could be on his driving privileges." Defendant also alleged that he "never appeared in court and thus was never admonished." During the evidentiary hearing, defendant testified that he was "following a string of cars" when he was pulled over for speeding and he told the officer that he "didn't necessarily know" how fast he was driving.

¶ 19 In its written memorandum of decision, the trial court's only finding on the issue of a meritorious defense was that defendant "has a defense to the traffic citation that could be litigated at trial." Presumably the court was referencing the theory that it had *itself* suggested during the evidentiary hearing: that defendant implied through his testimony that the arresting officer measured the speed of a different vehicle in the string of cars. However, defendant was required to set out "specific factual allegations supporting *** the existence of a meritorious defense." *Airoom*, 114 Ill. 2d at 220. It was not enough for defendant to merely *imply* the existence of a meritorious defense. Furthermore, we agree with the State that the theory suggested by the trial court was negated by defendant's own testimony that he "didn't necessarily know" how fast he was driving. Thus, defendant failed to present any allegations or evidence that would justify vacating his guilty plea. To hold otherwise would allow defendant to present a "string of cars" defense during a trial after he failed to allege the existence of any such defense—and in fact contradicted it—in his section 2-1401 petition.

¶ 20 For these reasons, we hold that the trial court abused its discretion by failing to apply the proper criteria when it weighed the facts. See *Ortega*, 209 Ill. 2d at 360. Because the State's brief demonstrates *prima facie* reversible error, we reverse the order vacating defendant's guilty plea. See *Talandis*, 63 Ill. 2d at 133.

¶ 21 Before we conclude, we acknowledge that there are instances in criminal cases where relief is appropriate under section 2-1401 even though the defendant has not alleged the existence of a meritorious defense. Our supreme court has explained that "[r]elief under section 2-1401 is predicated upon proof, by a preponderance of evidence, of a defense *or claim* that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." (Emphasis added.) *Vincent*, 226 Ill. 2d at 7-8. Accordingly, a defendant in a criminal case can seek relief under section 2-1401 for the sole purpose of correcting his sentence. See, *e.g.*, *People v. Donelson*, 2011 IL App (1st) 092594, ¶ 13 (holding that, while the defendant was not entitled to withdraw his guilty plea, the appropriate remedy for his void sentence under section 2-1401 was a remand for resentencing).

¶ 22 Here, defendant testified that a courthouse employee advised him that contesting the Illinois speeding citation would have a negative impact on his CDL. The argument could be made that this was a "claim" that would have "precluded entry of the judgment" under *Vincent*. If defendant's allegations are true, then the employee's action would be a violation of the Illinois Supreme Court Policy on Assistance to Court Patrons by Circuit Clerks, Court Staff, Law Librarians, and Court Volunteers, which prohibits any such staff member from recommending whether a case should be brought to court or commenting on the merits of a pending case. We share the trial court's concern over the alleged violation.

¶ 23 However, a close review of the record reveals that defendant suffered no prejudice as a result of the advice that he was allegedly given. Therefore, even assuming that section 2-1401 is the proper vehicle for challenging an "over-the-counter" guilty plea on a traffic citation, this is not an occasion where justice requires that we advocate for defendant and search the record for the purpose of sustaining the trial court's judgment. See *Talandis*, 63 Ill. 2d at 133.

¶ 24 Contrary to defendant's written allegations, the back of the Illinois speeding citation fully informed him of the consequences of his guilty plea. By signing the back of the citation, defendant acknowledged his understanding of the following admonishments:

> "I, the undersigned, do hereby plead guilty to the charge noted on the front side of this ticket. I understand my right to a trial, that my signature to this plea of guilty will have the same force and effect as a judgment of court and that this record will be sent to the Secretary of this State (or of the State where I received my license to drive). I hereby PLEAD GUILTY to the said offense on this ticket, GIVE UP my right to trial, and agree to pay the penalty required."

¶ 25 We also disagree with the trial court's finding that, based on his conversation with the courthouse employee, defendant "decided to forego (*sic*) his right to plead not guilty" and "give up his right to confront the witnesses against him at trial." Defense counsel conceded that, when defendant signed the back of the Illinois speeding citation, he was unaware of the possibility of receiving a sentence of court supervision. Defendant also testified that he was writing a check to pay the penalty for the citation when he asked the courthouse employee whether he could contest the citation for insurance purposes. The only logical inference to be drawn is that, if the courthouse employee had refrained from offering any advice, then the disposition of defendant's

Illinois speeding citation would have been the same. The trial court's finding to the contrary was therefore against the manifest weight of the evidence.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we reverse the trial court's order vacating defendant's guilty plea.

¶ 28 Reversed.