

**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).

**FILED**  
July 9, 2019  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2019 IL App (4th) 180612-U

NO. 4-18-0612

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JAMES TAYLOR,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Vermilion County
VICTOR CALLOWAY, Warden, Danville Correctional	)	No. 13MR241
Center,	)	
Defendant-Appellee.	)	Honorable
	)	Derek J. Girton,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Presiding Justice Holder White and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court reversed the trial court’s judgment denying plaintiff’s section 2-1401 petition, concluding the record failed to show the court had jurisdiction when it rendered the underlying judgment on plaintiff’s *habeas* complaint.

¶ 2 Plaintiff, James Taylor, appeals from the trial court’s judgment denying his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2016)). On appeal, plaintiff argues we should reverse the trial court’s judgment as he demonstrated the underlying judgment on his *pro se* complaint for relief under the Habeas Corpus Act (Habeas Act) (735 ILCS 5/10-101 to 10-137 (West 2012)) was void. We agree and reverse.

¶ 3 I. BACKGROUND

¶ 4 In October 1976, an Effingham County jury found plaintiff guilty of murder and

kidnapping. Plaintiff was sentenced to indeterminate terms of 100 to 200 years' imprisonment for murder and 6 to 20 years' imprisonment for kidnapping.

¶ 5 In November 2013, plaintiff filed a complaint for relief under the Habeas Act (735 ILCS 5/10-101 to 10-137 (West 2012)), alleging, in part, he was entitled to immediate release from prison because he was denied equal protection under the laws when the General Assembly granted prisoners with lesser sentences the option to receive a determinate sentence but denied him the same right and, had he been given a determinate sentence, he would have already completed his sentence. See Ill. Rev. Stat. 1979, ch. 38, ¶ 1003-3-2.1(b) (“No release date under this Section shall be set for any person sentenced to an indeterminate sentence under the law in effect prior to the effective date of this Amendatory Act of 1977 in which the minimum term of such sentence is 20 years or more.”).

¶ 6 In March 2014, the State moved to dismiss plaintiff's complaint under section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)), arguing, in part, plaintiff failed to state a claim for *habeas* relief as he was not entitled to a determinate sentence under section 3-3-2.1(b) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-3-2.1(b) (West 2012)), and his term of 100 to 200 years' imprisonment had not expired.

¶ 7 In June 2014, the trial court granted the State's motion to dismiss plaintiff's *habeas* complaint. Plaintiff appealed.

¶ 8 On July 7, 2015, this court issued a decision reversing the trial court's judgment and remanding for further proceedings, finding dismissal under section 2-615 was improper as it was not clearly apparent no facts could be proved entitling plaintiff to relief where the State failed to address plaintiff's equal-protection argument and challenge to section 3-3-2.1(b) of the

Unified Code. *Taylor v. Brannon*, 2015 IL App (4th) 140665-U, ¶¶ 14-17.

¶ 9 On July 28, 2015, the State filed a petition for rehearing with this court, which was denied on August 5, 2015.

¶ 10 On October 14, 2015, the State filed a petition for leave to appeal to the supreme court.

¶ 11 On October 16, 2015, plaintiff filed a motion in the trial court seeking immediate release from prison based on this court's decision.

¶ 12 On October 21, 2015, the trial court ordered the State to file a responsive pleading to plaintiff's *habeas* complaint purportedly pursuant to this court's decision.

¶ 13 On January 20, 2016, the supreme court denied the State's petition for leave to appeal.

¶ 14 On February 8, 2016, the State filed an answer to plaintiff's complaint, which addressed, in part, the merits of plaintiff's equal-protection argument and challenge to section 3-2.1(b) of the Unified Code.

¶ 15 On February 24, 2016, the supreme court issued its mandate from the denial of the State's petition for leave to appeal.

¶ 16 On February 25, 2016, this court received the supreme court's mandate.

¶ 17 On February 29, 2016, this court filed the supreme court's mandate and then issued this court's mandate and a letter informing the parties, the trial court, and the circuit clerk of the mandate's issuance. A docket entry contained in the trial record from that same day provides: "Letter from Appellate Court filed. APPEAL REVERSED." The mandate and accompanying letter from this court is contained in the trial record. The letter is file-stamped

February 29, 2016, by the clerk of this court. The mandate is not file-stamped.

¶ 18 On March 1, 2016, the trial court entered an order granting plaintiff 30 days to respond to the State's answer.

¶ 19 On March 21, 2016, plaintiff filed a letter with the trial court, which was addressed to the circuit clerk. In the letter, plaintiff highlighted the State's actions on appeal following the July 7, 2015, decision and the fact this court's mandate was not issued until February 27, 2016. Plaintiff requested the court rule on his October 16, 2015, motion as the court had "reacquire[d] jurisdiction."

¶ 20 On April 21, 2016, the trial court issued a written order denying plaintiff's *habeas* complaint. In the order, the court acknowledged the State's actions on appeal following the July 7, 2015, decision but did not address the issuance or filing of this court's mandate. Plaintiff later filed a motion to reconsider, which the court denied. Plaintiff did not appeal from the judgment denying his *habeas* complaint.

¶ 21 On January 22, 2018, plaintiff filed a petition for relief from judgment under section 2-1401 of the Civil Code (735 ILCS 5/2-1401 (West 2016)), alleging the trial court's judgment denying his *habeas* complaint was void. Specifically, plaintiff alleged the court's judgment was void for lack of jurisdiction as the trial record failed to show the circuit clerk filed this court's mandate. Plaintiff also alleged the court's judgment was void as it was based on an order filed (the October 21, 2015, order directing the State to file a responsive pleading) and a pleading entered (the State's February 8, 2016, answer) prior to the issuance of the February 29, 2016, mandate. Finally, plaintiff alleged the court's judgment was void because (1) the court did not cite this court's mandate or decision in its order; (2) the circuit clerk failed to comply with

Illinois Supreme Court Rule 369(a) (eff. July 1, 1982) (“The clerk of the circuit court shall file the mandate promptly upon receiving it.”); (3) he did not receive or waive notice of reinstatement under Illinois Supreme Court Rule 369(c) (eff. July 1, 1982) (“When the reviewing court remands the case for a new trial or hearing and the mandate is filed in the circuit court, the case shall be reinstated therein upon 10 days’ notice to the adverse party.”); and (4) the court did not hold a formal hearing on his complaint.

¶ 22 On May 17, 2018, the State filed a response to plaintiff’s section 2-1401 petition. In its response, the State summarized the arguments raised in plaintiff’s section 2-1401 petition as follows: “Plaintiff alleges this [c]ourt lacked jurisdiction to deny *habeas* relief in April 2016 because the mandate from the appellate court was not filed in this [c]ourt at that time, as \*\*\* Rule 369 requires.” The State then argued: “This [c]ourt does not need to review the legal sufficiency of plaintiff’s claims because their factual basis—that the appellate court’s mandate was not filed in this court—is not true.” In support of its argument, the State cited the February 29, 2016, docket entry, which it asserted demonstrated this court’s mandate and accompanying letter was filed by the circuit clerk. The State concluded, “[b]ecause the arguments in plaintiff’s petition rest solely on that incorrect factual assertion, the petition necessarily fails and should be denied.”

¶ 23 On June 4, 2018, plaintiff filed a reply to the State’s response to his section 2-1401 petition.

¶ 24 On June 27, 2018, the trial court denied plaintiff’s section 2-1401 petition following a hearing by telephone.

¶ 25 This appeal followed.

¶ 26

## II. ANALYSIS

¶ 27 On appeal, plaintiff argues we should reverse the trial court's judgment denying his section 2-1401 petition as he demonstrated the court's judgment on his *habeas* complaint was void. Plaintiff maintains the underlying judgment was void for lack of jurisdiction as the trial record fails to show the circuit clerk filed the mandate. Plaintiff also maintains the court's judgment was void as it was based on an order filed and a pleading entered prior to the issuance of this court's mandate. Finally, plaintiff maintains the court's judgment was void because (1) the court did not cite this court's mandate or decision in its order, (2) the circuit clerk failed to comply with Rule 369(a), (3) he did not receive or waive notice of reinstatement under Rule 369(c), and (4) the court did not hold a formal hearing on his complaint.

¶ 28 Plaintiff asserts he demonstrated the trial court's judgment on his *habeas* complaint was void for lack of jurisdiction as the trial record fails to show the circuit clerk filed the mandate. The State disagrees, contending plaintiff's assertion suggesting the mandate had not been filed in the trial court when the court rendered its judgment is "demonstrably false" as "the mandate is readily found in the record, along with the file-stamped cover letter indicating that it was filed on February 29, 2016."

¶ 29 Section 2-1401 of the Civil Code (735 ILCS 5/2-1401 (West 2016)) provides a comprehensive, statutory procedure allowing for the vacatur of final judgments older than 30 days. *People v. Vincent*, 226 Ill. 2d 1, 7, 871 N.E.2d 17, 22. When a section 2-1401 petition is brought on voidness grounds, "the general rules pertaining to section 2-1401 petitions—that they must be filed within two years of the order or judgment, that the petitioner must allege a meritorious defense to the original action, and that the petition must show that the petition was

brought with due diligence—do not apply.” *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104, 776 N.E.2d 195, 201-02 (2002). A judgment entered by a court without jurisdiction is void and may be challenged at any time, either directly or collaterally. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17, 6 N.E.3d 162.

¶ 30 The timely filing of a notice of appeal transfers jurisdiction from the trial court to the appellate court. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173, 950 N.E.2d 1136, 1142 (2011). Once the notice of appeal is filed, the appellate court’s jurisdiction attaches *instanter*, and the cause of action is beyond the jurisdiction of the trial court, with the exception of matters collateral or incidental to the judgment. *Id.* at 173-74.

¶ 31 In those cases where the appellate court issues a decision remanding the matter for further proceedings, “the trial court does not regain jurisdiction until it files the [appellate] court’s mandate.” *People v. Evans*, 2015 IL App (3d) 140753, ¶ 13, 38 N.E.3d 541; see also *In re Gonder*, 149 Ill. App. 3d 627, 628, 500 N.E.2d 1004, 1005 (1986) (“[T]he reviewing court retains jurisdiction of the appeal until that court’s mandate is filed in the circuit court.”); *People v. Farnsworth*, 31 Ill. App. 3d 771, 773, 335 N.E.2d 18, 19 (1975) (“The trial court did not acquire jurisdiction for the new trial until the date the mandate of this court was filed in the trial court.”); Ill. S. Ct. R. 369(c) (eff. July 1, 1982) (addressing further proceedings after “the mandate is filed” in the circuit court). “The mandate of an appellate court is its judgment which, upon transmittal to the trial court, vests the trial court with authority only to take action that conforms with the mandate.” *In re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 1152, 769 N.E.2d 1094, 1098 (2002); see also Ill. S. Ct. R. 368(a) (eff. July 1, 2006) (addressing when the clerk of this court must transmit the mandate to the circuit court).

¶ 32 Under Illinois Supreme Court Rule 369(a) (eff. July 1, 1982), the circuit clerk is responsible for “fil[ing] the mandate promptly upon receiving it.” “To constitute filing, the document must pass into the exclusive custody and control of the clerk to be made part of the court records.” *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1027, 911 N.E.2d 541, 550 (2009); see also Black’s Law Dictionary 642 (7th ed. 1999) (“file” means “[t]o deliver a legal document to the court clerk or record custodian for placement into the official record.”) “ ‘The uniform practice in the trial court has been to require actual receipt by the circuit clerk, as evidenced by the file stamp, before a paper is considered filed.’ ” *Knapp*, 392 Ill. App. 3d at 1027 (quoting *Wilkins v. Dellenback*, 149 Ill. App. 3d 549, 553, 500 N.E.2d 692, 695 (1986)).

¶ 33 In this case, the State correctly notes the letter from this court that accompanied the mandate is file-stamped. The State fails to recognize, however, the letter is file-stamped by the clerk of this court as opposed to the circuit clerk. Neither the mandate nor the accompanying letter is file-stamped by the circuit clerk. We decline to hold the mere presence of the mandate and letter in the trial record is sufficient to find jurisdiction revested in the trial court. While not argued by the State on appeal, we likewise decline to hold the February 29, 2016, docket entry, which does not even mention the mandate, is sufficient to find jurisdiction revested in the trial court. We find the record fails to show the trial court had jurisdiction when it denied plaintiff’s *habeas* complaint. The trial court should have accorded plaintiff relief on his section 2-1401 petition, that relief being the vacatur of the judgment denying his *habeas* petition and the allowance of further proceedings consistent with our decision in *Taylor*, 2015 IL App (4th) 140665-U.

¶ 34

### III. CONCLUSION



¶ 35 We reverse the trial court's judgment denying plaintiff's section 2-1401 petition and direct the trial court, after the mandates from both this decision and our prior decision are filed in the trial court, to vacate its judgment denying plaintiff's *habeas* complaint and then allow further proceedings consistent with our decision in *Taylor*, 2015 IL App (4th) 140665-U. We also direct the clerk of this court to forward a copy of the mandate from our prior decision to the circuit clerk for filing in accordance with Rule 369(a) at the time of the issuance of the mandate in this case.

¶ 36 Reversed.