

NOTICE
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2019 IL App (5th) 160184-U

NO. 5-16-0184

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,)	Jackson County.
)	
v.)	No. 10-CF-149
)	
VONZELL D. WILLIAMS,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The circuit court did not err in dismissing the petitioner's section 2-1401 petition where the asserted factual allegation for his claim was known at the time of trial, thus, it could not serve as a valid basis for postjudgment relief.

¶ 2 Following a jury trial, the petitioner, Vonzell D. Williams, was found guilty of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2008)) and theft over \$10,000 (720 ILCS 5/16-1(a)(4)(A) (West 2008)). After the circuit court merged the guilty verdicts, a judgment of conviction was entered on the charge of theft over \$10,000. The court sentenced the petitioner to a six-year term of imprisonment. The petitioner appealed. While his appeal was pending, the petitioner filed a petition for relief pursuant

to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)). On February 26, 2016, the State filed a motion to dismiss the petition, which the court granted on April 5, 2016. This appeal followed.

¶ 3 On appeal, the petitioner contends that the circuit court erred in dismissing his section 2-1401 petition because the State failed to prove that any of the elements of the theft over \$10,000 offense occurred in Illinois. As such, he argues that the judgment of conviction is void. For the following reasons, we affirm.

¶ 4 I. Background

¶ 5 This court issued a decision in the petitioner's direct appeal affirming the judgment of conviction and sentence. See *People v. Williams*, 2018 IL App (5th) 140434-U. Because a recitation of the facts was included in our prior decision, we will briefly summarize only the evidence necessary to understand this appeal.

¶ 6 On March 16, 2010, Max Snyder (Snyder), a detective with the Jackson County Sheriff's Department, observed the petitioner driving a Dodge Challenger with stolen Missouri license plates. Snyder followed the petitioner to a local residence where the petitioner parked the Dodge Challenger. Shortly thereafter, the petitioner was arrested for various charges, including possession of a stolen motor vehicle and theft over \$10,000.

¶ 7 In April 2014, the case proceeded to trial. The trial evidence showed that the Dodge Challenger, worth \$44,705, had been stolen from an Indiana car dealership in February 2010.

¶ 8 Detective Tim Legere of the Murphysboro Police Department testified that, during the petitioner's postarrest interview, the petitioner claimed his friend, "Little Chris," had

facilitated the purchase of the Dodge Challenger from an individual named "Mike." The petitioner was unable to provide the detectives with Little Chris's last name and claimed that he did not know Mike before the sale of the vehicle. Detective Legere testified that the petitioner met Mike in "Murphysboro in the vehicle with another gentleman and two women" and agreed to purchase the Dodge Challenger for \$20,000. The petitioner did not have the full \$20,000 with him so Mike, although initially reluctant, accepted several items as collateral—\$650, a laptop computer, and a television—until the petitioner returned with the Dodge Challenger and the remaining balance.

¶ 9 Although the petitioner's trial testimony contained several inconsistencies with regard to his purported postarrest statements, he was consistent regarding the alleged location of the purchase. The petitioner testified to the following details. In March 2010, the petitioner's friend, Demiko, informed him that a man named Mike was selling a Dodge Challenger. Demiko informed him that Mike lived out of town so "they agreed to meet at the KFC restaurant," and Mike would bring the vehicle to the petitioner. On March 12, 2010, the petitioner, Demiko and Mike met inside the KFC in Murphysboro before they inspected the Dodge Challenger. Mike allowed the petitioner to take the vehicle, even though the petitioner did not pay the full \$20,000, in exchange for the petitioner giving Demiko \$500, a laptop computer, and \$2000 to \$2500 worth of studio equipment as collateral until the petitioner returned with the remaining balance. The petitioner returned within an "hour and a half, two hours" to pay Mike the full \$20,000, which consisted of \$12,500 to \$13,000 from his savings and \$7000 to \$7500 his father had loaned him.

¶ 10 Following a jury trial, the petitioner was found guilty of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2008)) and theft over \$10,000 (720 ILCS 5/16-1(a)(4)(A) (West 2008)). After the circuit court merged the guilty verdicts, a judgment of conviction was entered on the charge of theft over \$10,000. The court sentenced the petitioner to a six-year term of imprisonment. After the petitioner appealed, he filed a petition for relief pursuant to section 2-1401(f) of the Code. The petitioner alleged that the circuit court lacked subject matter jurisdiction because the theft offense did not occur in Illinois. Specifically, the petitioner asserted that, because all elements of a subsection (a)(4) occur at once (720 ILCS 5/16-1(a)(4) (West 2008)), he could not be convicted of the offense in Illinois because it was completed "at the discreet [*sic*] moment [the petitioner] obtained control of the stolen Dodge challenger in Mt. Vernon, Indiana." The State moved to dismiss the petition asserting that the court had jurisdiction because the evidence showed that the petitioner had possession of the stolen vehicle in the State of Illinois. After considering the parties' arguments, the court granted the State's motion to dismiss on April 5, 2016. This appeal followed.

¶ 11 II. Analysis

¶ 12 The petitioner contends on appeal that the circuit court erred in dismissing his section 2-1401 petition because the State failed to prove that any of the elements of the theft over \$10,000 offense occurred in Illinois. As such, he argues that the judgment of conviction is void. Specifically, the petitioner asserts that the offense of theft over \$10,000 was completed when he obtained possession of the stolen Dodge Charger at a KFC in Indiana. We disagree.

¶ 13 Section 2-1401 of the Code provides a comprehensive statutory procedure authorizing a circuit court to vacate or modify a final order or judgment in civil and criminal proceedings. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 31. A section 2-1401 petition is a "forum in a criminal case in which to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and court at the time of trial, which, if then known, would have prevented the judgment." *People v. Johnson*, 352 Ill. App. 3d 442, 444 (2004); *People v. Gandy*, 227 Ill. App. 3d 112, 139 (1992); *People v. McDonald*, 405 Ill. App. 3d 131, 137 (2010).

¶ 14 Actions pursuant to section 2-1401 of the Code are civil proceedings and litigated in accordance with the usual rules of civil procedure. *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 279 (1982). "Relief 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." *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007). "Like a complaint, the petition may be challenged by a motion to dismiss for its failure to state a cause of action or if, on its face, it shows that the petitioner is not entitled to relief." (Internal quotation marks omitted.) *Id.* at 8. When a court enters a dismissal in a section 2-1401 proceeding that order will be reviewed *de novo*. *Id.* at 18.

¶ 15 Generally, to be entitled to relief under section 2-1401 of the Code, a petitioner must set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing

the section 2-1401 petition for relief. *People v. Pinkonsly*, 207 Ill. 2d 555, 566 (2003). However, because the general rules pertaining to section 2-1401 petitions do not apply in a challenge under paragraph (f) (*Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)), a section 2-1401(f) petition that challenges subject matter jurisdiction is not subject to procedural restraints because a judgment entered by a court without jurisdiction "may be challenged in perpetuity." *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38.

¶ 16 Pursuant to article VI, section 9 of our Illinois Constitution, circuit courts have jurisdiction over all justiciable matters. Ill. Const. 1970, art. VI, § 9. As applied in the context of criminal proceedings, the term "subject matter" jurisdiction means the power to hear and determine a given case. *People v. Davis*, 156 Ill. 2d 149, 156 (1993). Jurisdiction is a fundamental prerequisite to a valid prosecution and conviction. *Id.* at 155. "Where jurisdiction is lacking, any resulting judgment rendered is void and may be attacked either directly or indirectly at any time." *Id.*

¶ 17 Traditionally described as "receiving stolen property," section 16-1(a)(4) of the Criminal Code of 1961 provides that an act of theft occurs when a person knowingly "[o]btains control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen." 720 ILCS 5/16-1(a)(4) (West 2008); *People v. Walton*, 2013 IL App (3d) 110630, ¶ 25. This subsection proscribes the initial act by which a defendant first gains control of the property, rather than a continuing violation after control is obtained. *Walton*, 2013 IL App (3d) 110630, ¶ 28. Illinois criminal courts may only

adjudicate matters where "the offense is committed either wholly or partly within the State ***." 720 ILCS 5/1-5(a)(1) (West 2010). To satisfy this jurisdictional threshold, something "jurisdictionally significant" with respect to the charged offense must occur within Illinois. *People v. Holt*, 91 Ill. 2d 480, 492 (1982).

¶ 18 In his section 2-1401 petition, the petitioner, citing *Holt*, 91 Ill. 2d at 492, asserted that the circuit court lacked subject matter jurisdiction to enter a judgment of conviction because the theft offense did not occur in Illinois. Specifically, the petitioner asserted that, because all elements of subsection (a)(4) occur at once (720 ILCS 5/16-1(a)(4) (West 2008)), he could not be convicted of the offense in Illinois because it was completed "at the discreet [*sic*] moment [the petitioner] obtained control of the stolen Dodge challenger in Mt. Vernon, Indiana."

¶ 19 Based on our review of the record, the circuit court appears to have dismissed the petition because it disagreed with the petitioner's assertions of substantive law on which he relied. It is clear from the record that the petitioner's asserted factual allegation—he obtained control of the stolen Dodge Challenger in Indiana—was known to him at the time of trial. As such, the petitioner could have raised this factual assertion at trial, in a motion for a new trial, or on direct appeal. Instead, the petitioner asserted it for the first time in this appeal. Consequently, this factual assertion cannot serve as a claim for relief under section 2-1401 of the Code. See *In re Marriage of Baumgartner*, 226 Ill. App. 3d 790, 794 (1992) ("Issues which could have been raised in a motion for rehearing or on direct appeal are *res judicata* and may not be relitigated in [a] section 2-1401 proceeding ***."). Because a reviewing court may affirm the dismissal

of a section 2-1401 petition on any basis in the record (*People v. Miles*, 2017 IL App (1st) 132719, ¶ 22), we conclude that the petitioner's section 2-1401 petition failed to demonstrate that the petitioner was entitled to relief and, thus, dismissal was proper.

¶ 20 Lastly, we find noteworthy that the petitioner's brief on direct appeal unequivocally stated that he "took possession of the Dodge Challenger on March 12, [2010], at KFC in Carbondale." *People v. Williams*, 2018 IL App (5th) 140434-U. Again, in his reply brief, the petitioner stated that he "acquired the vehicle in Carbondale on March 12, [2010]." *Id.* Thus, the petitioner's briefs on direct appeal contradict the petitioner's factual assertion in support of his section 2-1401 postjudgment claim that the circuit court lacked subject matter jurisdiction.

¶ 21

III. Conclusion

¶ 22 Although a void judgment may be challenged at any time, here, the petitioner's asserted factual allegation was known to him at the time of trial. Accordingly, the petitioner's claim for postconviction relief is not valid under section 2-1401 of the Code. Nevertheless, the record does not support petitioner's claim that the circuit court lacked subject matter jurisdiction. We affirm the circuit court's order dismissing the petitioner's section 2-1401 petition.

¶ 23 Affirmed.