

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).

2012 IL App (4th) 100780-U

Filed 3/15/12

NO. 4-10-0780

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
KEENAN L. JACKSON,)	No. 94CF608
Defendant-Appellant.)	
)	Honorable
)	Lisa Holder White,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* Because the Illinois legislature has abolished writs of error *coram nobis*, the trial court was correct to deny defendant's petition for this common-law remedy.

¶ 2 Defendant, Keenan J. Jackson, appeals from an order in which the trial court, *sua sponte*, denied his "Motion for 28 USCS 1651 Writ of Coram Nobis." We affirm the trial court's judgment because, in section 2-1401(a) of the Code of Civil Procedure (735 ILCS 5/2-1401(a) (West 2010)), the legislature has abolished writs of error *coram nobis*.

¶ 3 I. BACKGROUND

¶ 4 In his petition, defendant acknowledged that he pleaded guilty to count I of the information, unlawful possession of a controlled substance with the intent to deliver it (720 ILCS 570/401(d) (West 1994)). According to his petition, however, the information gave him the misleading impression that count I was a misdemeanor instead of a felony, and appointed defense

counsel gave him the misleading advice that the conviction would not prejudice him in any way in the future. As it turned out, the conviction did prejudice him in a subsequent criminal case in federal court: the federal court used the conviction to enhance his prison sentence by 10 years.

¶ 5 On August 13, 2010, the trial court denied the "Motion for 28 USCS Writ of Coram Nobis" on the ground that the court "ha[d] no jurisdiction to entertain such a motion and the relief sought [could not] be granted."

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 At common law, the purpose of a writ of error *coram nobis* was to "to bring before the court rendering the judgment matters of fact not appearing of record, which, if known at the time the judgment was rendered, would have prevented its rendition." *People v. Touhy*, 397 Ill. 19, 24 (1947). The legislature has abolished the writ of error *coram nobis*, replacing it with a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). 735 ILCS 5/2-1401(a) (West 2010). We are aware of no authority *requiring* a circuit court to construe a petition for a writ of error *coram nobis* as a petition pursuant to section 2-1401. *Cf. People v. Swamynathan*, 236 Ill. 2d 103, 112 (2010) ("A trial court is not required to recharacterize a *pro se* pleading as a postconviction petition, even if the claims raised are cognizable under the Act, although this court has encouraged trial courts to do so when appropriate.").

¶ 9 Assuming, for the sake of argument, that the trial court should have recharacterized defendant's pleading as a petition pursuant to section 2-1401, the court nevertheless was correct to deny the petition, for three reasons that the State points out in its brief. First, "the petition must be filed not later than [two] years after the entry of the order or judgment." 735 ILCS 5/2-1401(c)

(West 2010). In this case, the court entered judgment on defendant's guilty plea on May 30, 1995. He filed his petition on August 9, 2010, more than two years afterward. Second, "[t]he petition must be supported by affidavit or other appropriate showing as to matters not of record." 735 ILCS 5/2-1401(b) (West 2010). No affidavit is attached to defendant's petition, even though the petition raises matters external to the record, such as defense counsel's alleged advice. Third, Illinois case law holds that a proceeding under section 2-1401 is the wrong forum in which to raise ineffective assistance of counsel but that instead a defendant must raise such a claim in a proceeding under the Post-Conviction Hearing Act (725 ILCS 5/122-1 through 122-7 (West 2010)). *People v. Smith*, 176 Ill. App. 3d 132, 136-37 (1988). (We further note that, in order to seek relief under the Post-Conviction Hearing Act, the defendant must currently be in the custody of the Illinois Department of Corrections. *People v. Martin-Trigona*, 111 Ill. 2d 295, 299 (1986).) Therefore, in our *de novo* review, we conclude that the court was correct to deny defendant's "Motion for 28 USCS 1651 Writ of Coram Nobis." See *People v. Vincent*, 226 Ill. 2d 1, 14 (2007).

¶ 10

III. CONCLUSION

¶ 11 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal.

¶ 12 Affirmed.