

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).

2019 IL App (4th) 170579-U

NO. 4-17-0579

FILED

July 24, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JERMAINE L. DAVIS,)	No. 11CF1525
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.

Presiding Justice Holder White and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's judgment.

¶ 2 On June 12, 2017, defendant, Jermaine L. Davis, filed a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2016)). On June 29, 2017, the State filed a motion to dismiss defendant's petition. On July 20, 2017, the trial court dismissed defendant's petition because it was without merit and time barred. Defendant appeals the dismissal of his petition.

¶ 3 On appeal, the Office of the State Appellate Defender (OSAD), who was appointed to represent defendant on appeal, moves to withdraw its representation of defendant, citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987), contending an appeal in this cause would be without merit. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5 In February 2012, defendant was convicted of first degree murder. In March 2012, the trial court sentenced defendant to 60 years' imprisonment. In defendant's direct appeal, this court affirmed the trial court's judgment. *People v. Davis*, 2013 IL App (4th) 120486-U, ¶ 23. In March 2014, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2012)). The trial court dismissed his petition in April 2014. In June 2015, defendant filed a petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2014)), which was summarily dismissed. In July 2017, this court granted OSAD's motion to withdraw as counsel on appeal and affirmed the dismissal of defendant's petition in a summary order. *People v. Davis*, No. 4-15-0580 (2017) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 6 In June 2017, defendant filed the petition for relief from judgment pursuant to section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2016)) at issue in this appeal. In his petition, defendant argued the trial court did not have jurisdiction over his case because he was never given the opportunity to enter a plea. That same month, the State moved to dismiss defendant's petition. In July 2017, the trial court granted the State's motion to dismiss, finding the allegations in defendant's petition were both time-barred and meritless. In August 2017, the trial court filed a notice of appeal on defendant's behalf and appointed OSAD to represent defendant on appeal.

¶ 7 While this appeal was pending, on October 3, 2017, defendant filed a petition for *habeas corpus* relief pursuant to section 10-102 of the Procedure Code (735 ILCS 5/10-102 (West 2016)), arguing the trial court lacked personal jurisdiction over him because the court did not give him the opportunity to enter a plea at the arraignment hearing on September 19, 2011.

Defendant argued the judgment against him was void. On October 16, 2017, the trial court dismissed defendant's petition. Defendant appealed, arguing the trial court erred in dismissing his petition because the record showed he was never given the opportunity to enter a plea during the September 19, 2011, arraignment hearing, the trial court never acquired jurisdiction over him, and his conviction was void.

¶ 8 On appeal from the dismissal of defendant's petition for *habeas corpus* relief, this court noted a docket entry showed defendant entered a not-guilty plea at his preliminary hearing, and defendant did not argue the trial court fabricated his not-guilty plea. Instead, defendant argued a trial court cannot acquire personal jurisdiction over a defendant without the defendant entering a plea at his initial arraignment hearing. In our decision, we stated, "Defendant provides no authority for this specific constraint—the entry of a plea at the arraignment hearing—on the court's ability to acquire personal jurisdiction over defendant, and we see no merit in this argument." *People v. Davis*, 2018 IL App (4th) 170866-U, ¶ 11. We affirmed the dismissal of defendant's *habeas corpus* petition. *Davis*, 2018 IL App (4th) 170866-U, ¶ 14.

¶ 9 II. ANALYSIS

¶ 10 On appeal, OSAD has filed a motion to withdraw as counsel and has included a supporting memorandum. Proof of service has been shown on defendant. This court granted defendant leave to file a response on or before March 27, 2019. Defendant failed to do so. Based on our examination of the record, we conclude, as has OSAD, that an appeal in this cause would be meritless.

¶ 11 "To obtain relief under section 2-1401 [of the Procedure Code], the defendant 'must affirmatively 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, 565, 802 N.E.2d 236, 243 (2003) (quoting *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21, 499 N.E.2d 1381, 1386 (1986)).

¶ 12 OSAD is correct defendant’s claim the trial court lacked jurisdiction because he did not enter a plea at his arraignment hearing is without merit. The trial court clearly had subject matter jurisdiction over charges related to a murder in Champaign County pursuant to our state constitution which grants general subject-matter jurisdiction to our circuit courts. Ill. Const. 1970, art. VI, § 9. Further, the trial court acquired personal jurisdiction over defendant when he appeared before the court. *People v. Speed*, 318 Ill. App. 3d 910, 915, 743 N.E.2d 1084, 1088 (2001). “[O]nce a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction thus acquired.” *People v. Davis*, 156 Ill. 2d 149, 156, 619 N.E.2d 750, 754 (1993). As OSAD notes in the memorandum supporting its motion to withdraw:

“Entering a plea is a non-jurisdictional step in criminal procedure. At arraignment, defendants are informed of the charges against them and called upon to enter a plea. 725 ILCS 5/113-1 (2010). However, defendants are not required to enter a plea, 725 ILCS 5/113-4(b) (2010) (if defendant stands mute, a plea of not guilty shall be entered and the matter will proceed to trial), and an irregularity in arraignment will not affect the validity of the proceedings if the defendant ‘proceeds to trial without objecting to such a failure or irregularity.’ 725 ILCS 5/113-6 (2010).”

We agree.

¶ 13 In addition, OSAD rightfully points out this court has already ruled on

defendant's argument a court cannot acquire personal jurisdiction over a defendant if the defendant does not enter a plea at his initial arraignment hearing. According to our earlier decision, "Defendant provides no authority for this specific constraint—the entry of a plea at the arraignment hearing—on the court's ability to acquire personal jurisdiction over defendant, and we see no merit in this argument." *People v. Davis*, 2018 IL App (4th) 170866-U, ¶ 11.

¶ 14 Because defendant's claim the trial court did not have jurisdiction is meritless, the trial court did not err in dismissing defendant's section 2-1401 petition.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we grant OSAD's motion and affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 17 Affirmed.