

2019 IL App (1st) 160695-U

No. 1-16-0695

Order filed June 14, 2019

Fifth Division

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 7482
	)	
MICHAEL BRADLEY,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the trial court's *sua sponte* dismissal of defendant's *pro se* petition for relief pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)) over his contention that he stated a meritorious due process claim relating to his sentence.

¶ 2 Defendant Michael Bradley appeals the *sua sponte* dismissal of his *pro se* petition for relief pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). He contends that the trial court erroneously dismissed his petition where he stated a

meritorious due process claim that he was denied the benefit of his plea bargain when, at his plea hearing, the trial court erroneously admonished him regarding the length of his mandatory supervised release (MSR) term. For the following reasons, we affirm.

¶ 3 After being charged in a 41-count indictment, defendant pled guilty on June 4, 2007, pursuant to a negotiated plea, to two counts of aggravated criminal sexual assault and one count of home invasion, stemming from an incident on December 30, 2005, where he entered the victim's dormitory at DePaul University. Under the plea agreement, defendant would serve consecutive terms of 17 years for each of the two aggravated criminal sexual assaults and 6 years for the home invasion, for a total aggregate sentence of 40 years' imprisonment.<sup>1</sup>

¶ 4 During the plea hearing, the court advised defendant of the possible sentencing ranges for each offense and the requirement that they be served consecutively. With respect to the MSR term, the court stated: "The more serious charges of home invasion and aggravated criminal sexual assault require you to serve 3 years of mandatory supervised release or parole upon the completion of your sentences. Do you understand that?" Defendant acknowledged that he understood.

¶ 5 Defendant's mittimus did not reflect an MSR term. He did not file a postplea motion or a direct appeal.

¶ 6 On December 29, 2010, defendant mailed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)), alleging various claims of ineffective assistance of plea counsel and acknowledging that his petition was

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<sup>1</sup> On the same date, defendant also pled guilty to three separate residential burglaries occurring on different dates. He received seven years' imprisonment on each of those charges, to be served concurrently with each other and one of the 17-year terms for aggravated criminal sexual assault. These pleas are not the subject of the instant appeal.

untimely. Defendant's petition was docketed for second-stage proceedings and counsel was appointed. Appointed counsel filed an amended petition, arguing, as relevant here, that defendant was denied due process when he pled guilty for a specific sentence and the trial court incorrectly admonished him that the MSR term for the aggravated criminal sexual assault counts was three years, rather than the applicable indeterminate MSR term (three years to life) at the time he committed the offense in 2005. See 730 ILCS 5/5-8-1(d)(4) (West 2005). Relying on *People v. Whitfield*, 217 Ill. 2d 177 (2005), defendant argued his sentence was more onerous than the one he bargained for. Defendant further claimed he would not have pled guilty had he known that the MSR term would potentially extend to life, rather than three years.

¶ 7 In his amended petition, defendant again acknowledged that his petition was untimely and that in order to raise a *Whitfield* claim, he was required to file his petition within three years of June 4, 2007, the date of his conviction.

¶ 8 The State subsequently moved to dismiss defendant's petition. Regarding defendant's due process claim related to his MSR term, the State argued defendant's petition was untimely and he offered no facts to show the delay was not due to his culpable negligence. Untimeliness aside, the State additionally argued that the court substantially complied with the requirements of the law at sentencing and the admonishment regarding the MSR term was not reversible error. The trial court subsequently granted the State's motion to dismiss, finding defendant's petition was untimely and he did not establish that the delay was not due to his culpable negligence.

¶ 9 On appeal, we affirmed the trial court's second-stage dismissal of defendant's petition. *People v. Bradley*, 2014 IL App (1st) 122938-U. We concluded that his petition was not filed within the requisite 3-year time period following his conviction, and he failed to adequately

explain the delay in filing. *Id.* at ¶¶ 21-25. We also determined that “[g]iven our disposition of this case on the basis of untimely filing of defendant’s petition, we need not address the merits of defendant’s MSR claim.” *Id.* at ¶ 26.

¶ 10 On October 14, 2015, defendant filed the *pro se* section 2-1401 petition for relief from judgment at bar. In his petition, defendant claimed his sentence is “void and illegal” because the trial court did not advise him that the MSR term for aggravated criminal sexual assault was an indeterminate term of three years to life, as mandated by section 5-8-1(d) of the Unified Code of Corrections (730 ILCS 5/5-8-1(d)(4) (2006)). Because the court incorrectly informed him that the MSR term was three years, defendant argued his sentence failed to conform to statutory guidelines. He further asserted the trial court “exceeded its jurisdiction and authority invested by the legislature by diverging from the established indeterminate MSR sentencing directive.” Because he claimed his sentence was void, defendant maintained he did not need to allege a meritorious defense or show due diligence. Defendant additionally claimed that his plea was invalid because the “misrepresentation” of the MSR term he would serve “deceived” him “with an unfulfillable promise,” and the Illinois Department of Corrections unilaterally increased his MSR term “at some unknown point to comply with the statute.”

¶ 11 Defendant attached to his petition the transcript from the plea hearing.<sup>2</sup> He also attached an affidavit wherein he averred that the State, through his attorney, offered him a plea for an aggregate 40-year sentence with a 3-year MSR term. His attorney told him several times that his MSR term would be three years. Defendant was not aware that the mandated MSR term was

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<sup>2</sup> The transcript of defendant’s plea hearing is not contained in the record on appeal. However, defendant attached copies of the transcripts to both his postconviction petition and the instant section 2-1401 petition.

three years to life until, in 2011, his appointed postconviction counsel informed him. Had he known about the indeterminate term, he would have sought to negotiate a shorter prison sentence “by either seeking to reduce the actual charges [he] pled to,” “renegotiating the statement of facts,” or, alternatively, going to trial.

¶ 12 The State did not respond to defendant’s petition. On January 15, 2015, the trial court *sua sponte* dismissed the petition. In a written order, the court concluded defendant’s sentence was not void because the sentencing court did not lack jurisdiction to enter judgment, and, therefore, his petition was untimely because it was not filed within two years of the date of his conviction. The court also concluded that defendant’s MSR claim was constitutional in nature and therefore he “did not state a valid claim for relief pursuant to section 2-1401.” Defendant timely appealed.

¶ 13 On appeal, defendant contends that the trial court erroneously dismissed his section 2-1401 petition because he stated a meritorious due process claim that he was denied the benefit of his bargain when he was incorrectly admonished that his MSR term would be three years, rather than the statutorily mandated indeterminate term. In setting forth this argument, defendant acknowledges that he previously raised this claim in his prior postconviction petition, but argues, and we agree, that it is not barred by *res judicata* because it was not disposed of on the merits.

¶ 14 Section 2-1401 of the Code of Civil Procedure is a civil remedy that extends to criminal cases and establishes a comprehensive, statutory procedure that allows for the vacatur of a final judgment older than 30 days. 735 ILCS 5/2-1401 (West 2014); *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). Generally, a section 2-1401 petition must be filed within two years of entry of the relevant final judgment, unless the petitioner can show legal disability and duress, or if the ground for relief is fraudulently concealed. 735 ILCS 5/2-1401 (West 2014). Proceedings under

section 2-1401 are “subject to the usual rules of civil practice.” *Vincent*, 226 Ill. 2d at 8. Therefore, the State’s failure to answer the petition constitutes an admission of all well-pleaded facts, and renders the petition ripe for adjudication. *Vincent*, 226 Ill. 2d at 9. Here, the State did not respond to defendant’s petition. Thus, the question before the trial court was whether the allegations in defendant’s petition entitled him to relief as a matter of law. *Id.* at 9-10.

¶ 15 A trial court’s judgment on the pleadings or a dismissal of a section 2-1401 petition is reviewed *de novo*. *Id.* at 13. Under this standard, we are not bound by the reasons relied upon by the circuit court and may affirm on any basis supported by the record. *People v. Harvey*, 379 Ill. App. 3d 518, 521 (2008)).

¶ 16 We initially note that it is undisputed in this case that the trial court incorrectly advised defendant that his MSR term would be three years, and section 5-8-1(d) of the Unified Code of Corrections requires that defendant’s sentence on that conviction include a mandatory indeterminate three-year to life MSR term (730 ILCS 5/5-8-1(d)(4) (West 2006)).

¶ 17 Rather, the parties dispute whether the trial court erred by *sua sponte* dismissing defendant’s petition based on timeliness. Defendant, relying on *People v. Malloy*, 374 Ill. App. 3d 820 (2004), argues the trial court may not *sua sponte* dismiss a section 2-1401 petition based on timeliness because timeliness is an affirmative defense that must be raised by the State. The State responds that the court did not err in *sua sponte* dismissing the petition on timeliness grounds. The State also argues that the court properly dismissed defendant’s petition because his MSR claim is not cognizable under section 2-1401.

¶ 18 We need not address the propriety of the trial court’s *sua sponte* dismissal of the petition on timeliness grounds because the court also dismissed the petition on other grounds, namely,

that it raised constitutional issues not appropriate for section 2-1401 proceedings. See *Harvey*, 379 Ill. App. 3d at 521 (we may affirm on any basis supported by the record).

¶ 19 A section 2-1401 petition differs from a postconviction petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)). “A postconviction petition requires the court to decide whether the defendant’s constitutional rights were violated at trial (see 725 ILCS 5/122-1(a) (West 2014)); a section 2-1401 petition, on the other hand, requires the court to determine whether facts exist that were unknown to the court at the time of trial and would have prevented entry of the judgment.” *Pinkonsly*, 207 Ill. 2d at 566.

¶ 20 Specifically, “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.” *Vincent*, 226 Ill. 2d at 7-8. In order to be entitled to relief pursuant to section 2-1401, the petitioner is required to affirmatively plead specific factual allegations supporting each of the following elements: (1) the existence of a meritorious claim; (2) due diligence in presenting that claim in the original action; and (3) due diligence in seeking relief under section 2-1401. *In re Petition of the Village of Kildeer to Annex Certain Territory*, 124 Ill. 2d 533, 544 (1988). “That is, in order to obtain relief under section 2-1401, the defendant must show both a meritorious defense to the charges against him and due diligence in presenting it.” *People v. Pinkonsly*, 207 Ill. 2d 555, 565 (2003). A meritorious defense involves questions of fact, not law. *Id.*

¶ 21 In this court, defendant argues that his petition stated a meritorious due process claim pursuant to the principles set forth in *Whitfield*, 217 Ill. 2d 177. In *Whitfield*, the defendant

entered a plea of guilty to charges of first degree murder and armed robbery pursuant to a negotiated plea agreement. At the plea hearing, the defendant was not advised that he would be subject to a three-year term of MSR following his 25-year sentence for murder. The defendant did not file a postjudgment motion to withdraw his plea and did not directly appeal his conviction or sentence. Instead, after learning about the three-year MSR term, the defendant filed a *pro se* “motion for relief from judgment.” In the motion, he argued that his due process rights were violated because the MSR term, about which he was never admonished, had been added to his negotiated sentence and resulted in a more onerous sentence than the one he had agreed to when he pled guilty. The defendant, represented by counsel, ultimately asked the court to treat his motion as a postconviction petition under the Act. After a hearing, the court granted the State’s motion to dismiss the petition. This court upheld the dismissal of the petition and the defendant appealed to the supreme court.

¶ 22 Our supreme court analyzed the dismissal of the defendant’s petition by “recalling the familiar principles concerning postconviction proceedings” under the Act. *Whitfield*, 217 Ill. 2d at 183. Specifically, the law governing the second-stage dismissal of the defendant’s petition. In doing so, the court in *Whitfield* determined that the defendant had not received the benefit of the bargain to plead guilty because he agreed to a 25-year sentence but was never told of the three-year period of MSR which attached to his sentence as an operation of law. *Whitfield*, 217 Ill. 2d at 188. The court concluded that the appropriate remedy was to modify defendant’s 25-year sentence to a term of 22 years, to be followed by the mandatory 3-year term of supervised release. *Whitfield*, 217 Ill. 2d at 205. Defendant here claims the same error, but requests further

proceedings under section 2-1401 of the Code or the opportunity to withdraw his plea because we cannot reduce his sentence by the applicable MSR term as it is indeterminate.

¶ 23 Here, as in *Whitfield*, defendant's section 2-1401 petition set forth a constitutional claim of a due process violation as a result of the trial court's failure to correctly admonish him of the correct MSR term, and therefore deprived him of the benefit of his plea bargain. However, proceedings under section 2-1401 are subject to the rules of civil practice and the question before the trial court was whether the allegations in defendant's petition entitled him to relief as a matter of law. See *Vincent*, 226 Ill. 2d at 9-10. Pursuant to section 2-1401, the court properly concluded that defendant's due-process MSR claim did not entitle him to relief. Stated differently, regardless of the merits of defendant's due process claim, he did not allege any errors of fact that, known at the time of his plea, would have precluded entry of judgment, as required under section 2-1401. Rather, he raised a constitutional deprivation. Thus, his claim is not appropriate for relief under section 2-1401. See, e.g., *People v. Harris*, 391 Ill. App. 3d 246, 249-50 (concluding the defendant's constitutional claim under *Whitfield* is "not properly pursued" in a section 2-1401 petition). Critically, a section 2-1401 petition is not designed to provide a general review of all trial errors or to substitute for a direct appeal. *People v. Haynes*, 192 Ill. 2d 437, 461 (2000).

¶ 24 In reaching this conclusion, we reject defendant's contention that because he states a meritorious due process claim, he should be afforded relief under section 2-1401 to "achieve justice." To the extent defendant's sentence did not conform with the law, it is voidable, not void, and therefore is not subject to independent attack at any time. *People v. Price*, 2016 IL 118613, ¶ 17 (citing *People v. Castleberry*, 2015 IL 116916, ¶¶ 11-18). Despite defendant's

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contentions, we are required to follow the rulings of our supreme court to prevent defendants from challenging their nonconforming sentences in perpetuity. *Price*, 2016 IL 118613, ¶ 17 (citing *Castleberry*, 2015 IL 116916, ¶¶ 17-19). Accordingly, we find defendant's constitutional due process claim is not cognizable in a section 2-1401 petition.

¶ 25 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.