

NOTICE
Decision filed 04/26/24. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2024 IL App (5th) 230093-U

NO. 5-23-0093

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent 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,)	Champaign County.
)	
v.)	No. 17-CF-511
)	
RIO M. FRANKLIN,)	Honorable
)	Randall B. Rosenbaum,
Defendant-Appellant.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly dismissed the petitioner’s 2-1401 petition as untimely.

¶ 2 The petitioner, Rio M. Franklin, appeals the January 3, 2023, order of the circuit court of Champaign County dismissing his petition for relief from judgment brought pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2022)). Specifically, the circuit court found that the petition was untimely as it was filed after the two-year time limit and did not challenge a void judgment. For the following reasons, we affirm the circuit court’s dismissal.

¶ 3 **I. BACKGROUND**

¶ 4 Following a jury trial, Franklin was found guilty of the Class 1 offense of aggravated robbery. Franklin had an extensive criminal history prior to this conviction. This was his second conviction of a Class 1 felony, the first being a conviction for residential burglary in 2014. Franklin

had also been previously convicted of a Class 2 felony and Class 4 felony for aggravated unlawful use of a weapon (AUUW). Franklin also had been convicted of several misdemeanor charges. As a result of Franklin's prior felony convictions, the State moved, prior to trial, to amend its complaint to indicate that Franklin was eligible for a Class X sentencing range. At that time, defense counsel did not object, stating that Franklin was aware of it and that they "had numerous conversations about it." The court then admonished Franklin on the implications of this amendment which may result in him being sentenced as a Class X felony offender and the mandatory sentencing that accompanied that classification. Ultimately, Franklin was sentenced to 25 years' imprisonment as a Class X offender based upon his criminal record.

¶ 5 Franklin filed a motion for reconsideration of his sentence on July 26, 2018, which was denied. He then filed a direct appeal, wherein we affirmed his conviction in *People v. Franklin*, 2020 IL App (4th) 180527-U.¹

¶ 6 On July 13, 2022, the circuit court of Champaign County vacated Franklin's Class 4 AUUW felony conviction as it was void under *People v. Aguilar*, 2013 IL 112116, and on September 13, 2022, reduced Franklin's Class 2 AUUW conviction to a Class 4 AUUW conviction as it had been elevated based upon the previous AUUW conviction which had been vacated.

¶ 7 On October 25, 2022, Franklin filed a 2-1401 petition wherein he argued that his 25-year sentence for the aggravated robbery charge must be vacated because it was predicated on his two prior AUUW convictions which are now void or reduced. Franklin also argued that he was not proven guilty beyond a reasonable doubt at trial and that his prior convictions were improperly used as double enhancement.

¹Our colleagues in the Fourth District Appellate Court handled the direct appeal in this matter as Champaign County was a part of the Fourth District at that time.

¶ 8 The State filed a motion to dismiss on October 27, 2022, wherein it argued that Franklin’s aggravated robbery conviction is unaffected by *Aguilar* and that the petition was untimely filed outside of the two-year time period allowed for 2-1401 petition. The State also argued *res judicata* and waiver of the issues, and that Franklin was eligible for an extended term sentence because of his prior conviction for residential burglary and not because of the previous AUUW convictions.

¶ 9 On January 3, 2023, the circuit court found in favor of the State and dismissed the 2-1401 petition. The circuit court in its order found that “no exception exists to the two-year filing deadline.” “There is nothing in the charge or conviction for aggravated robbery that is unconstitutional. It is not void.” Further, “[b]ecause the charge for which [Franklin] was convicted is not void, the two-year time limit applies. [Franklin] filed the current Petition well after the two-year time frame.” Further, the circuit court found, “[e]ven if the merits of [Franklin]’s claims were addressed, the Court would reject them because of *res judicata* and waiver. All of the facts were known to [Franklin] at the time of the jury trial and sentencing hearings. *Aguilar* *** was decided 5 years before his conviction and sentence. [Franklin] could have raised the issues on direct appeal but did not ***.”

¶ 10 A late notice of appeal was allowed by our court on June 15, 2023.

¶ 11 II. ANALYSIS

¶ 12 Petitions under section 2-1401 may seek relief from a void conviction or sentence at any time. 735 ILCS 5/2-1401(f) (West 2022). A judgment is considered void “(1) when it is entered by a court that lacked personal or subject-matter jurisdiction or (2) when it is based on a statute that is facially unconstitutional and void *ab initio*.” *People v. Stoecker*, 2020 IL 124807, ¶ 28.

¶ 13 Franklin relies upon *Aguilar* to argue that his sentence for aggravated robbery is facially unconstitutional and void *ab initio* because the circuit court considered previous convictions which

have been vacated in elevating his offender classification. In *Aguilar*, our supreme court held certain subsections of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)) were facially unconstitutional for violating the second amendment. *People v. Aguilar*, 2013 IL 112116, ¶ 22. However, the holding in *Aguilar* is inapplicable here because Franklin was convicted of aggravated robbery, not AUUW. Thus, the statute Franklin was convicted under is not unconstitutional or void *ab initio* under *Aguilar*.

¶ 14 Therefore, Franklin is not arguing that the *judgment or conviction* is unconstitutional or void *ab initio*, but that his *sentence* is. However, this is not a recognized exception to the time limit set forth for 2-1401 petitions. “*Castleberry* established a sentence that does not conform to statute is merely voidable, not void, and therefore subject to procedural rules and restraints such as forfeiture.” *People v. Douglas*, 2017 IL App (4th) 120617-B, ¶¶ 16. “ ‘[A] defendant may no longer rely on the void sentence rule to overcome forfeiture of a claimed sentencing error or to challenge a statutorily nonconforming sentence in perpetuity.’ ” *Id.* (quoting *People v. Price*, 2016 IL 118613, ¶ 17). Thus, *Castleberry* removed the previously recognized third type of judgment from the void judgment rule, being a sentence that does not conform to the applicable sentencing statute. *People v. Castleberry*, 2015 IL 116916, ¶ 19.

¶ 15 We recognize that Franklin may not have been eligible for Class X sentencing because of the invalidity of his prior AUUW convictions, and thus, the circuit court’s imposition of a sentence under the Class X range, instead of a Class 1 range, may not have complied with the applicable sentencing statute. As a result, the circuit court may have exceeded its authority in imposing a Class X sentence. But because Franklin is in fact challenging his sentence, which per *Castleberry* is *voidable*, and not *void ab initio*, his claim is subject to the statutory two-year limitation in section 2-1401. As a result, the circuit court’s dismissal of the 2-1401 petition as untimely was correct, as

Franklin's filing of the petition came approximately 4½ years after the judgment was rendered, well outside of that limit.

¶ 16 Additionally, we note that *Aguilar*, upon which the petitioner so heavily relies, was decided approximately five years prior to Franklin's conviction in this matter. Franklin filed a motion to reconsider the sentence and a direct appeal in this case wherein sentencing errors were argued. This issue could have easily been raised. However, this argument was never presented to the circuit court until the 2-1401 petition.

¶ 17 III. CONCLUSION

¶ 18 Wherefore, for the foregoing reasons, we affirm the circuit court of Champaign County's January 3, 2023, order dismissing Franklin's 2-1401 petition.

¶ 19 Affirmed.