

Nos. 2—10—0779 & 2—10—0780 cons.  
Order filed June 16,2011

**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  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 02—CF—2063
	)	
RYAN BASHAW,	)	Honorable
	)	Patricia Piper Golden,
Defendant-Appellant.	)	Judge, Presiding.

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 04—CF—59
	)	
RYAN BASHAW,	)	Honorable
	)	Patricia Piper Golden,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Zenoff and Burke concurred in the judgment.

**ORDER**

Held: The trial court properly dismissed defendant's section 2—1401 petition (though on an improper basis): in the underlying criminal cases, there were convictions but no

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sentences, and thus there was no final judgment that could be attacked under section 2—1401; despite the entry of orders purporting to close those cases, they remained open for the trial court to either vacate the convictions or impose sentences thereon.

In this consolidated appeal, defendant, Ryan Bashaw, seeks reversal of the trial court's order dismissing as untimely his petition filed under section 2—1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2—1401 (West 2008)). We hold that, while untimeliness was not a proper basis for the dismissal, the dismissal was nevertheless proper, because the petition did not seek relief from a "final judgment" as required under section 2—1401 of the Code. We thus affirm.

### I. BACKGROUND

On September 6, 2002, defendant was indicted for, *inter alia*, aggravated driving under the influence (DUI) (625 ILCS 5/11—501(a)(2), (d)(1)(A) (West 2002)) and driving while his license was revoked (625 ILCS 5/6—303 (West 2002)) (case No. 02—CF—2063 and appeal No. 2—10—0779).

On January 9, 2004, defendant was charged with DUI (625 ILCS 5/11—501(c—1)(2) (West 2002)) (case No. 04—CF—59 and appeal No. 2—10—0780).

On March 26, 2004, defendant pleaded guilty in each case, and the court continued each case for a sentencing hearing on March 24, 2006, two years later. Each "Plea of Guilty" document contains a handwritten box with a checkmark located next to a handwritten entry that reads "Conviction Enters."

The common-law record shows that, over the next two years, the parties appeared for status calls several times, and the cases were repeatedly continued. There is nothing in the record showing that a sentencing hearing ever took place.

On January 3, 2007, the State appeared before the trial court, and the following transpired:

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“[Assistant State’s Attorney]: \*\*\* Your Honor, [defense counsel] was previously here along with [defendant], and as the Court recollects, we did have a conference on this case. Pursuant to the conference, State and the defense have agreed to waive all fines and costs because [defendant] does not owe any restitution, based on the previous agreement with the Court; and we would ask that the orders enter accordingly, waiving any remaining fines and costs and closing the file.

THE COURT: Very well. By agreement, the Court will waive—pursuant to the Court’s previous agreement with this defendant, he having complied with all of the Court’s orders, the Court will waive fines and costs, by agreement with the State, as so ordered.”

Thereafter, the trial court entered an order in each case. In case No. 02—CF—2063, the order read: “Discharge & Close per orders 1/3/07.” In case No. 04—CF—59, the order read: “Waive F&C, Close File.”

On March 5, 2010, defendant filed an amended petition under section 2—1401 of the Code, seeking to vacate his convictions in each case. In the petition, defendant alleged that “[w]hen [he] pled guilty, convictions were entered against [him] \*\*\*, and he was placed in Kane County’s Drug Court with the promise that if he successfully completed Drug Court, all convictions entered against him in both \*\*\* cases would be vacated.” In support, defendant attached his own affidavit, along with affidavits from James Doyle, the retired circuit court judge who presided over defendant’s plea hearing; Leonard Solfa, defendant’s attorney; and Randy Reusch, a Kane County probation officer. Each affidavit supported defendant’s claim that it was agreed that his convictions would be vacated if he successfully completed all the terms of Drug Court.

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On April 6, 2010, the State moved to dismiss defendant’s petition as untimely, arguing that the orders entered on March 24, 2004, were final orders, as defendant “was in essence sentenced to participate in drug court.” The State argued further that, even if the court disagreed that the March 24, 2004, orders were final, the orders entered in January 2007, which closed the files, were final. According to the State, under either scenario, defendant’s petition was untimely, because under section 2—1401 of the Code a petition challenging a final order must be filed no more than two years after entry of the final order. See 735 ILCS 5/2—1401(c) (West 2008).

On May 20, 2010, the trial court agreed with the State that a final judgment had been entered; “[w]hether it [was] entered in 2004 or in 2007, it is a final judgment.” Therefore, the court concluded that defendant’s petition was untimely and dismissed it.

Following the denial of his motion for reconsideration, defendant timely appealed.

## II. ANALYSIS

Defendant argues that the trial court erred in granting the State’s motion to dismiss his petition as untimely. According to defendant, the January 2007 orders, which closed defendant’s respective cases, were void because the trial court lacked the authority under the Drug Court Treatment Act (see 730 ILCS 166/1 *et seq.* (West 2006)) to “enter orders merely ‘closing’ his files.” Thus, according to defendant, because the orders were void, the normal two-year time limit under section 2—1401 of the Code did not apply. See *In re Haley D.*, 403 Ill. App. 3d 370, 373 (2010) (“[A] petition brought pursuant to section 2—1401(f) to vacate a void order is not amenable to the due diligence, meritorious defense, and two-year time requirements.”).

The State responds with the erroneous argument that defendant has forfeited his claim that the orders are void, because he failed to raise it below. Indeed it is well established that a defendant

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may challenge a void order at any time and that such a claim cannot be forfeited. See *People v. Brown*, 225 Ill. 2d 188, 195 (2007) (“[A] claim that a judgment is void is not subject to waiver and may be raised at any time, either directly or collaterally.”). Nevertheless, the State goes on to argue that the January 2007 orders are not void and, thus, the trial court properly dismissed the petition as untimely.

We need not determine whether the January 2007 orders are void. That is not the issue; rather the issue is whether the January 2007 orders are final. Section 2—1401 of the Code provides a statutory procedure for seeking relief from “final orders and judgments, after 30 days from the entry thereof.” 735 ILCS 5/2—1401(a) (West 2008). Although the January 2007 orders purportedly closed defendant’s cases and thus purported to be final, we find that they were not. Where a conviction is entered, the final judgment in a criminal case is a sentence. *People v. Caballero*, 102 Ill. 2d 23, 51 (1984); *People v. Michel*, 230 Ill. App. 3d 675, 678 (1992); *People v. Frantz*, 150 Ill. App. 3d 296, 300 (1986). Here, when defendant pleaded guilty on March 26, 2004, the court continued each case for a sentencing hearing on March 24, 2006, two years later. There is no evidence that the sentencing hearing took place on that date or any other date. Nor is there evidence that the convictions were vacated. Thus, the cases remain open and pending.

We hold that, because no final order had been entered, the trial court’s dismissal of defendant’s petition under section 2—1401 of the Code was proper (although on an incorrect basis), and we affirm. See *People v. Horrell*, 235 Ill. 2d 235, 241 (2009) (noting that the reviewing court may affirm the judgment of the trial court on any basis contained within the record). The trial court retains jurisdiction to either vacate defendant’s convictions or impose sentences thereon.

### III. CONCLUSION

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Based on the foregoing, we affirm the judgment of the circuit court of Kane County.

Affirmed.