

NOTICE
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2011 IL App (4th) 100576-U

Filed 12/30/11

NO. 4-10-0576

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
CHARLES R. ROBINSON IV,)	No. 87CF588
Defendant-Appellant.)	
)	Honorable
)	John W. Belz,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The court granted appointed counsel's motion to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirmed the trial court's judgment, agreeing with counsel's conclusion no meritorious issues could be raised on appeal as to whether the trial court erred in dismissing defendant's section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2010)).

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal because no meritorious issues can be raised in this case. For the following reasons, we grant OSAD's motion and affirm the trial court.

¶ 3 I. BACKGROUND

¶ 4 A. Prior Proceedings

¶ 5 In January 1989 defendant, Charles R. Robinson IV, pleaded guilty to one count of robbery in Sangamon County case No. 87-CF-588. After hearing the mitigating factors, the

trial court sentenced defendant to three years in prison. On March 22, 1989, defendant filed a motion to withdraw his guilty plea, which the court denied on March 23, 1989. The court granted defendant's motion to reduce sentence and sentenced defendant to three years' probation, with a condition he serve six months in jail. On April 20, 1989, the court denied defendant's second motion to reduce sentence. Defendant filed a notice of appeal and the appeal was dismissed. *People v. Robinson*, 4-89-0375 (July 12, 1989) (dismissed on motion).

¶ 6 On September 19, 1997, defendant filed a postconviction petition. On October 3, 1997, the trial court dismissed it. This court affirmed. *People v. Robinson*, Nos. 4-97-1029, 4-97-1030 cons. (Oct. 14, 1998) (unpublished order under Supreme Court Rule 23).

¶ 7 On October 14, 1997, defendant filed a postconviction petition alleging his guilty plea was coerced. On November 10, 1997, the trial court dismissed the petition. Defendant appealed, and OSAD was appointed as counsel. OSAD filed a motion to withdraw asserting the case presented no meritorious issues for review. We granted this motion and affirmed, finding the appeal without merit because (1) defendant was not in custody at the time of the filing and (2) defendant did not satisfy the statutory deadline for his postconviction petition. *People v. Robinson*, 4-97-1029 (Oct. 14, 1998) (unpublished order under Supreme Court Rule 23).

¶ 8 On February 15, 2001, defendant filed an "Application for Writ of Habeas Corpus" (725 ILCS 5/122-1 (West 2000)). Defendant sought both a writ of *habeas corpus* and relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2000)). On August 21, 2003, the State filed a motion to dismiss addressing only the issue of the writ of *habeas corpus*. On November 7, 2003, the trial court granted the State's

motion. Defendant appealed, and we affirmed. *People v. Robinson*, 4-04-0479 (Feb. 28, 2006) (unpublished order under Supreme Court Rule 23).

¶ 9 We addressed defendant's separate motions in turn. We affirmed the trial court's motion to dismiss the writ of *habeas corpus* because defendant was not in custody of the State of Illinois when it was filed. Although not addressed by the State or ruled on by the trial court, we affirmed the dismissal of the section 2-1401 petition because (1) it was not timely filed (2) defendant did not demonstrate due diligence in moving for section 2-1401 relief, and (3) defendant did not proffer evidence of facts unknown to the court at the time of judgment which would have prevented judgment from being entered.

¶ 10 B. Proceedings on the Instant Section 2-1401 Petition

¶ 11 On January 7, 2010, defendant filed a petition for relief from judgment under section 2-1401(f) of the Code (735 ILCS 5/2-1401 (West 2010)). Defendant alleged he had mental deficiencies which caused him to unknowingly and unintelligently plead guilty to robbery in 1989. On March 25, 2010, the State filed a motion to dismiss, arguing (1) the petition was untimely and (2) defendant "did not allege specific errors of fact unknown" to the court and defendant which would have prevented entry of judgment. On April 28, 2010, defendant responded, and on May 12, 2010, he filed a motion to supplement and amend. On June 8, 2010, after a telephone conference, the trial court granted the State's motion. The court found (1) the petition was untimely and (2) defendant presented no new fact unknown to the court and himself which would have prevented judgment from being entered. Defendant appealed, and OSAD was appointed to represent defendant in this appeal.

¶ 12 Counsel filed a motion to withdraw accompanied by a brief in conformity with

the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Our records show defendant was provided notice of the motion. On our own motion, we gave defendant leave to file additional points and authorities in his behalf by June 27, 2011. Defendant timely filed additional points and authorities. The State responded. After examining the record in accordance with our duties under *Finley*, we grant OSAD's motion to withdraw as counsel on appeal and affirm the trial court's judgment.

¶ 13

II. ANALYSIS

¶ 14 OSAD alleges no colorable argument can be made the trial court erred by dismissing defendant's section 2-1401 petition. Specifically, OSAD contends (1) defendant's petition was not timely filed and (2) defendant's petition did not allege any errors of fact unknown to the court at the time of his plea which would have prevented him from entering a knowing and voluntary plea.

¶ 15 "When examining a trial court's ruling on a section 2-1401 petition, the appropriate standard of review is whether the trial court abused its discretion." *People v. Haynes*, 192 Ill. 2d 437, 461, 737 N.E.2d 169, 182-83 (2000). "Section 2-1401 is intended to correct errors of fact, unknown to the petitioner and the court at the time of the judgment, which would have prevented the rendition of the judgment had they been known." *People v. Muniz*, 386 Ill. App. 3d 890, 892, 899 N.E.2d 428, 431 (2008). Petitions brought pursuant to section 2-1401 must be filed within two years after the order or entry of judgment. 735 ILCS 5/2-1401(c) (2010). To obtain relief under this section, defendant must affirmatively set forth factual allegations to satisfy the following three requirements: (1) the existence of a meritorious claim or defense; (2) due diligence in presenting this claim or defense in the trial court; and (3) due

diligence in presenting a claim for relief under section 2-1401. *People v. Pinkonsly*, 207 Ill. 2d 555, 565, 802 N.E.2d 236, 243 (2003).

¶ 16 OSAD correctly asserts defendant's petition was untimely because it was filed more than 20 years after his conviction. Defendant argues the two-year limitation stated in section 2-1401(c) does not apply because his conviction is void, relying on section 2-1401(f). However, in defendant's "petition for relief from judgment under 735 ILCS 5/2-1401(f)," defendant argues an arson conviction, a separate conviction not the subject of his appeal, is void. At no point does defendant assert the 1989 robbery conviction is void. Alternatively, he argues he should be granted relief from judgment under section 2-1401 because he had mental defects at the time of his guilty plea, unknown to the court, that would have precluded judgment from being entered against him on the 1989 robbery conviction. Any and all allegations as to a void judgment concern the unrelated arson conviction. Defendant cannot use an unrelated arson conviction he claims to be void as a means of bypassing a timeliness challenge to his section 2-1401 petition on his 1989 robbery conviction. We agree with OSAD no colorable argument can be made on appeal as to the trial court's finding defendant's petition was untimely.

¶ 17 We also agree no meritorious argument can be made on appeal as to the trial court's finding defendant failed to allege errors of fact unknown to the court that would have prevented judgment from being entered against him. Defendant alleges the court's 1989 order for him to "undergo mental health counseling" is evidence he was suffering from mental deficiencies at the time of trial, which should have precluded judgment from being entered against him. We find this argument unconvincing. The order defendant cites appears in the record for the March 23, 1989, hearing on defendant's motion to reconsider sentence. After

reducing defendant's sentence, the court stated:

"You are to have an alcohol evaluation just to make sure there is no problem with that. If the evaluation discloses a problem, you are to complete any recommended treatment program, and the [c]ourt's going to order mental health counseling just to make sure there [are] no problems in that area, and you are to complete that."

The order addresses specific matters and is insufficient to suggest defendant had mental defects that should have precluded him from entering a guilty plea.

¶ 18 Our conclusion is further supported by the record from defendant's guilty plea hearing. The trial court inquired into defendant's mental state and the voluntariness of the plea. Defendant was asked whether he had ever "been confined in a mental institution or under the care of a psychiatrist for a mental disorder at any time." The court also asked whether defendant was "currently under the care of any doctor or receiving any medicine" at the time of the hearing. Defendant responded in the negative to both questions. The court asked defendant if he understood the nature of the charge against him and explained the possible sentences he could receive for such a charge. The court then explained his rights and that it was necessary he "knowingly and understandingly waive those rights." Defendant agreed he understood each individual right as it was explained to him and pleaded guilty. Finally, the court asked defendant if he had been coerced in any way to make his plea, and he responded in the negative.

¶ 19 Defendant further contends he corroborated his mental issues with a psychiatric evaluation from 1994, reporting defendant as having an intelligence quotient of below 50; a

fitness assessment from 1996; and a court order from January 1997 finding him unfit to stand trial. However, such evidence is not relevant to defendant's claims regarding his mental state when he pleaded guilty to robbery in 1989. We note, in *Robinson*, No. 4-04-0479 (slip order at 8), we rejected similar items alleged as new evidence. We find defendant did not allege any errors of fact unknown to the court at the time of his plea which would have prevented judgement from being entered against him, and we agree defendant can make no such colorable argument on appeal.

¶ 20

III. CONCLUSION

¶ 21 After reviewing the record consistent with our responsibilities under *Finley*, we agree with OSAD no colorable argument can be made in this appeal, and we grant OSAD's motion to withdraw as counsel for defendant and affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as cost of this appeal.

¶ 22 Affirmed.