



defendant's two prior murder convictions. The defense counsel argued that the imposition of a natural-life sentence was not mandatory. The judge sentenced the defendant to a natural-life sentence and explained his reasoning as follows:

"In this sentence the Court has considered the factors enumerated in the Criminal Code as factors in Mitigation and factors in Aggravation. The Court does not find any factors in Mitigation. There are many factors in Aggravation. The Court has considered the evidence presented at the trial in this cause. The Court has considered the presentence investigation. The Court has considered the evidence presented at this hearing today and the arguments of counsel. And the Court believes that this Defendant cannot be rehabilitated, and that it is important that society be protected from this Defendant."

¶ 5 The defendant's conviction was affirmed on direct appeal. *People v. Holman*, 115 Ill. App. 3d 60 (1983). On August 14, 2009, the defendant filed a petition for relief from judgment under section 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)). In his petition, he alleged that his sentence was void because the judge erroneously sentenced him to a mandatory natural-life sentence. In response, the State filed a motion to dismiss the petition for being untimely. The circuit court dismissed the defendant's petition, stating that it was untimely and without merit. The defendant filed this timely appeal.

¶ 6 ANALYSIS

¶ 7 On appeal, the defendant argues that the circuit court erred in dismissing his section 2-1401 petition as untimely and without merit. He further argues that the circuit court exceeded its authority by reviewing the voidness issue when the State's motion to dismiss was limited to the petition's untimeliness. The defendant also contends that the circuit court's error cannot be considered harmless error.

¶ 8 In response, the State argues that the defendant's petition was correctly dismissed because the defendant's sentence was not void and the petition was filed 28 years after the sentencing hearing.

¶ 9 Section 2-1401 allows a petitioner to obtain relief from a final judgment older than 30 days as long as the petition is filed within two years of the order. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). However, the two-year limitations period does not apply where the section 2-1401 petition seeks relief from a void judgment. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). When a circuit court dismisses a petition in a section 2-1401 proceeding, the applicable standard of review is *de novo*. *Vincent*, 226 Ill. 2d at 18. Moreover, where a dismissal is proper as a matter of law, the circuit court may be affirmed on any basis supported by the record. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007).

¶ 10 We first note that the defendant's petition was filed 28 years after the defendant was sentenced. Thus, on its face the petition is untimely because it was filed past the two-year time limitation. However, if the defendant's sentence is void, as he alleges, then the time limitation does not apply.

¶ 11 The defendant argues that the circuit court erred in addressing the voidness issue since the State's motion to dismiss contained only an untimeliness argument. However, in order to determine if the petition meets the timeliness exception that has been carved out for void judgments, the court must first determine if the judgment at issue was void. Therefore, the circuit court did not err in considering the defendant's allegations of voidness, and we now turn to the defendant's contention that his sentence was void.

¶ 12 A judgment is void if the court lacked jurisdiction over the parties or lacked the authority to enter the judgment. *Sarkissian*, 201 Ill. 2d at 103. To properly

analyze the defendant's allegations that his sentence was void, we must review the history of the sentencing statutes at issue in this case. At the time of the murder, the court had discretionary power to impose a natural-life sentence on a defendant if it found any of the aggravating factors listed in subsection (b) of section 9-1 of the Criminal Code of 1961 (Ill. Rev. Stat. 1979, ch. 38, par. 9-1(b)) to exist. Ill. Rev. Stat. 1979, ch. 38, par. 1005-8-1(a)(1)(b). However, in 1980, the statute was amended to state as follows: "[I]f the defendant has previously been convicted of murder under any state or federal law or is found guilty of murdering more than one victim, the court shall sentence the defendant to a term of natural life imprisonment[.]" Ill. Rev. Stat. 1981, ch. 38, par. 1005-8-1(a)(1)(c) (as amended by Pub. Act 81-1118, § 1 (eff. July 1, 1980)).

¶ 13 In the instant case, the defendant argues that he was sentenced under the amended version of the statute instead of the statute governing at the time of the murder. He contends that it is apparent from the record that the judge imposed a mandatory natural-life sentence on him. We do not agree.

¶ 14 The transcript of the sentencing hearing establishes that the judge's sentence was based upon a number of different considerations. The judge specifically stated that he considered the many aggravating factors, the evidence presented at the trial, the presentence investigation, and the evidence presented at the sentencing hearing. The judge also noted that he did not believe that rehabilitation was an option for the defendant. Thus, we conclude that the judge used his discretion in sentencing the defendant to a natural-life sentence based upon all the factors before him in the case which were allowed pursuant to the statute properly governing at the time of the murder. Ill. Rev. Stat. 1979, ch. 38, par. 1005-8-1(a)(1)(b). Therefore, the defendant's sentence was not void.

¶ 15 In light of our conclusion that the sentence was not void, the defendant's petition would not meet the timeliness exception for void judgments. Therefore, the defendant's petition, filed well beyond the two-year limitation imposed on section 2-1401 petitions, is untimely and was properly dismissed. Because the court finds that the circuit court did not commit error in dismissing the defendant's petition, we decline to address the defendant's contention regarding the applicability of harmless error review.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, we affirm the circuit court's dismissal of the defendant's section 2-1401 petition.

¶ 18 Affirmed.