

is serving a 60-year extended-term sentence for felony murder. The plaintiff appeals *pro se* from the circuit court's *sua sponte* dismissal of his *pro se* hybrid pleading seeking relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2008)) and *habeas corpus* relief under article X of the Code (735 ILCS 5/10-101 *et seq.* (West 2008)). For the following reasons, we reverse in part and affirm in part and remand.

¶ 3

BACKGROUND

¶ 4 On May 12, 1984, the plaintiff and two accomplices bludgeoned and shot to death a handicapped middle-aged man whose legs had been amputated below the knee. On May 18, 1984, the plaintiff was charged by indictment with murder, felony murder predicated on armed robbery, home invasion, and armed robbery. On October 10, 1984, the plaintiff pled guilty to felony murder in exchange for the State's agreement to drop the remaining charges against him. The State indicated that it would seek a natural-life term of imprisonment. Prior to accepting his plea, the judge meticulously advised the plaintiff of his rights and the potential sentences to which his plea exposed him. The plaintiff repeatedly told the judge that he understood that the shortest sentence that he could receive was a 20-year term of imprisonment, that if certain aggravating factors were found he could receive an extended-term sentence, that the maximum sentence that he could receive was a natural-life sentence without the possibility of parole, that he could remain imprisoned "as long as [he] live[d]," and that the judge, not a jury, would impose his sentence.

¶ 5 The circumstances of the crime, including the victim's double-amputee status, were fully developed at the two-day sentencing hearing. The plaintiff testified that he knew, prior to committing the crime, that the victim was an amputee and that the victim had answered the door in his undershorts and without his prosthetic legs. The State sought a term of natural-life imprisonment because the murder had been committed in the course of a home

invasion, the acts that caused the victim's death were exceptionally brutal and heinous and indicative of wanton cruelty, and the victim was handicapped. The judge observed that the victim's murder had been accompanied by exceptionally brutal or heinous behavior that was indicative of wanton cruelty. This finding would have supported the imposition of a term of natural-life imprisonment. See Ill. Rev. Stat. 1983, ch. 38, par. 1005-8-1(a)(1)(b). The judge then imposed an extended-term sentence expressly because the victim had suffered from a permanent and debilitating handicap at the time of his death. The judge cited section 5-5-3.2(b)(3)(iii) of the Unified Code of Corrections (Ill. Rev. Stat. 1983, ch. 38, par. 1005-5-3.2(b)(3)(iii)). The judge sentenced the plaintiff to a term of 75 years in prison. On March 6, 1985, the judge denied the plaintiff's motion to withdraw his plea but reduced his sentence to 60 years' imprisonment. On appeal, this court rejected the plaintiff's contention that the extended-term sentence was excessive in light of his remorse and his status as a youthful first offender, and we affirmed his conviction and sentence. *People v. Foutch*, No. 5-85-0237 (May 9, 1986) (unpublished disposition pursuant to Supreme Court Rule 23 (eff. Apr. 1, 1982)).

¶ 6 On April 17, 2009, the plaintiff filed *pro se* a hybrid pleading seeking relief from judgment and *habeas corpus* relief. The clerk of the circuit court initially filed the pleading under the docket number of the underlying conviction, Marion County case No. 84-CF-59. The case number was later changed to case No. 09-MR-50. The plaintiff asserted that he was entitled to relief from judgment pursuant to section 2-1401 of the Code because the circuit court lacked the legal authority or jurisdiction to impose an extended-term sentence. He claimed that his 60-year term of imprisonment was thus void for a lack of jurisdiction. He also claimed that he was entitled to *habeas corpus* relief because he was being held past the termination of the maximum nonextended term of imprisonment to which he could have been sentenced. The plaintiff argued that his rights to due process, notice, a jury trial, and

proof beyond a reasonable doubt had been violated because the law as it existed at the time of his prosecution required that any fact that would increase the maximum penalty upon conviction must be alleged in the indictment, submitted to a jury, and proven beyond a reasonable doubt. The plaintiff cited *Jones v. United States*, 526 U.S. 227 (1999), in support of his argument. The plaintiff also claimed that his sentence was void because the statute upon which the court had relied in imposing the extended-term sentence was unconstitutional. The plaintiff claimed that the statute was unconstitutional because it allowed the court, rather than a jury, to impose an extended-term sentence on the basis of aggravating factors that had to be proven by only a preponderance of the evidence. He asserted that he was entitled to a declaration by the court that "portions of Chapter 38, Section 1005-8-1(a)(1) *et seq.*" were "void and unconstitutional" and that he was also entitled to an order for his immediate and unconditional discharge from custody because he had served the maximum nonextended term to which he could have been sentenced.

¶ 7 On May 1, 2009, the circuit court *sua sponte* dismissed the pleading, noting that more than 30 days had elapsed since the plaintiff had been sentenced. On May 26, 2009, the plaintiff filed a notice of appeal. On May 29, 2009, the circuit court made another docket sheet entry in which it found that because neither the plaintiff nor the defendant was located in Marion County, it lacked jurisdiction to grant the requested relief.

¶ 8 STANDARD OF REVIEW

¶ 9 We note that the plaintiff filed a *pro se* hybrid pleading seeking relief from judgment under section 2-1401 of the Code and *habeas corpus* relief. We review *de novo* the circuit court's decision to dismiss *sua sponte* both a petition for relief from judgment and a *habeas corpus* complaint, without notice to the plaintiff or an opportunity for the opposing party to file a responsive pleading. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007) (a section 2-1401 petition); *Hennings v. Chandler*, 229 Ill. 2d 18, 31-32 (2008) (a complaint for *habeas corpus*

relief).

¶ 10 We also note that the circuit court dismissed the plaintiff's hybrid pleading as untimely because it was filed more than 30 days after his sentence had been imposed. This reasoning was erroneous. A section 2-1401 petition for relief from final orders and judgments is required to be filed in the same proceeding in which the order or judgment was entered "*after* 30 days from the entry thereof" (emphasis added) and not later than two years after the entry of the order or judgment. 735 ILCS 5/2-1401(a), (c) (West 2008). The two-year limitations period does not apply where the section 2-1401 petition seeks relief from a void sentence. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). After the plaintiff filed his notice of appeal and the jurisdiction of the appellate court had attached (see *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 431 (2005) (the proper filing of a notice of appeal causes the jurisdiction of the appellate court to attach and deprives the trial court of jurisdiction to modify its judgment)), the circuit court entered another order. It stated that the court lacked jurisdiction over the plaintiff's complaint because neither the plaintiff nor the defendant was located in Marion County. This conclusion was also erroneous. A complaint for *habeas corpus* relief that challenges a void order or judgment may be filed at any time after conviction (see *Beacham v. Walker*, 231 Ill. 2d 51, 58-59 (2008)), either in the county of the conviction and sentence or in the county in which an inmate is incarcerated. 735 ILCS 5/10-103 (West 2008). The plaintiff was convicted in Marion County, rendering that county the appropriate venue in which either section 2-1401 relief or *habeas corpus* relief could be sought.

¶ 11 However, the circuit court's reasoning is of no moment. The reviewing court may affirm the dismissal of a petition for relief from judgment or a complaint for *habeas corpus* relief on any basis that is called for by the record, regardless of whether the lower court relied on that basis or whether its reasoning was correct. *People v. Caballero*, 179 Ill. 2d

205, 211 (1997) (a petition for relief from judgment); *Beacham*, 231 Ill. 2d at 61 (a complaint for *habeas corpus* relief).

¶ 12

CONTENTIONS ON APPEAL

¶ 13 The plaintiff contends that, first, his constitutional rights under the fifth, sixth, and fourteenth amendments (U.S. Const., amends. V, VI, XIV) were violated, rendering his extended-term sentence void, because the aggravating sentencing factor of the victim's handicapped status was not set out in the indictment and that factor was not submitted to a jury and proven beyond a reasonable doubt. Second, he argues that his extended-term sentence was void because sections 5-8-1(a)(1) and 5-8-2 of the Unified Code of Corrections (Ill. Rev. Stat. 1983, ch. 38, pars. 1005-8-1(a)(1), 1005-8-2 (now see 730 ILCS 5/5-8-1(a)(1), 5-8-2 (West 2008))) unconstitutionally allowed the court to impose an extended-term sentence and required aggravating factors to be established by only a preponderance of the evidence, rather than beyond a reasonable doubt. He asserts that the statutes are void *ab initio* because they are facially unconstitutional.

¶ 14 The plaintiff seeks the reversal of the court's order, a finding by this court that the statute under which he was sentenced was unconstitutional, a finding that he has served the maximum nonextended term of imprisonment to which he could have been sentenced, and an order of *habeas corpus* directing his immediate and unconditional release from the Department of Corrections.

¶ 15

DISCUSSION

¶ 16 The plaintiff filed a *pro se* hybrid pleading incorporating both a petition for relief from judgment and a *habeas corpus* complaint. Although the plaintiff did not completely distinguish his arguments for each claim of relief from each other (735 ILCS 5/2-603, 1-108 (West 2008)), we analyze the claims separately because they have different requirements.

¶ 17

I. Petition for Relief From Judgment

¶ 18 "To obtain relief under section 2-1401, the defendant 'must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief.'" *People v. Pinkonsly*, 207 Ill. 2d 555, 565 (2003) (quoting *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986)). "However, where *** a petitioner seeks to vacate a final judgment as being void [citation], the allegations of voidness 'substitute[] for and negate[] the need to allege a meritorious defense and due diligence.'" *People v. Vincent*, 226 Ill. 2d 1, 7 n.2 (2007) (quoting *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)).

¶ 19 Petitions for relief from judgment "are subject to the usual rules of civil practice" and, thus, are "subject to dismissal for want of legal or factual sufficiency." *Vincent*, 226 Ill. 2d at 8. However, the supreme court has held that a circuit court's *sua sponte* dismissal of a petition for relief from judgment before the end of the 30-day window to answer or file a motion to dismiss is premature and requires the reversal of the circuit court's dismissal order. *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009).

¶ 20 In the instant case, the circuit court dismissed the plaintiff's petition *sua sponte* before the 30-day time period to answer had expired. "The circuit court's dismissal short-circuited the proceedings and deprived the State of the time it was entitled to answer or otherwise plead." *Id.* Thus, there was no admission by the defendant of all well-pleaded facts, and the petition was not ripe for adjudication. Accordingly, we reverse the circuit court's dismissal of the plaintiff's petition for relief from judgment and remand for further proceedings on that petition.

¶ 21 However, the plaintiff filed a hybrid pleading and we must still consider the plaintiff's

habeas corpus complaint on the merits.

¶ 22

II. *Habeas Corpus* Complaint

¶ 23 A *habeas corpus* complaint allows for the review of proceedings that exhibit certain defects, but even if an alleged error involves a denial of constitutional rights, *habeas corpus* may not be used to obtain the review of proceedings in the absence of those defects. *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430 (1998). "The sole remedy or relief authorized by a writ of *habeas corpus* is the prisoner's immediate release from custody." *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125 (2006). The remedy is available only if (1) a lack of jurisdiction exists over the subject matter or the person in the circuit court or (2) some postconviction occurrence happens that entitles an inmate to his immediate release from custody. *People v. Gosier*, 205 Ill. 2d 198, 205 (2001). "Although a void order or judgment may be attacked 'at any time or in any court, either directly or collaterally' [citation], including a *habeas* proceeding [citations], the remedy of *habeas corpus* is not available to review errors which only render a judgment voidable and are of a nonjurisdictional nature." *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008).

¶ 24 In support of his claim for *habeas corpus* relief, the plaintiff asserts that his case is governed by *Jones v. United States*, 526 U.S. 227 (1999), a case that issued 13 years after the termination of the plaintiff's direct appeal. In *Jones*, the Supreme Court examined a federal carjacking statute on direct appeal. The Court construed the federal statute, which contained subsections that set out additional penalties for carjackings that resulted in serious bodily injuries or death, and found that it "establish[ed] three separate offenses by the specification of distinct elements, each of which must be charged by indictment, proven beyond a reasonable doubt, and submitted to a jury for its verdict." *Id.* at 252. The Court noted that its decision "[did] not announce any new principle of constitutional law, but merely interpret[ed] a particular federal statute." (Emphasis added.) *Id.* at 251 n.11. The

Court ruled, "[U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." *Id.* at 243 n.6. However, *Jones* and its direct descendant, *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), involved interpretations of only *federal* sentencing guidelines.

¶ 25 More recently, this issue was considered in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), where the Supreme Court considered a direct appeal from a sentence that had been entered on a plea of guilty to a *state* offense. It ruled that the fourteenth amendment mandated the same result in a state prosecution as it had in the federal prosecution in the *Jones* case (*Apprendi*, 530 U.S. at 476). It held that in state prosecutions, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490. *Apprendi* expressly applied the rules of *Jones* and *Almendarez-Torres* to state prosecutions. *Apprendi*, 530 U.S. at 476-78. We note, however, that *Apprendi's* central holding makes no mention of any indictment right; the Supreme Court expressly declined to address the indictment question. *Apprendi*, 530 U.S. at 477 n.3; *People v. Ford*, 198 Ill. 2d 68, 72 n.1 (2001) (any discussion of the charging instrument in *Apprendi* was *dictum* because that case specifically disavowed any holding regarding the indictment). As of 2001, however, the charging statute, section 111-3 of the Code of Criminal Procedure of 1963, was amended to incorporate the holding in *Apprendi* and provide for the inclusion in the charging instrument of aggravating factors that may give rise to an extended-term sentence. Pub. Act 91-953, § 5 (eff. Feb. 23, 2001) (adding 725 ILCS 5/111-3(c-5)).

¶ 26 Although the plaintiff carefully avoided citing *Apprendi* in his pleading in support

of his contentions, his sentencing challenge was indistinguishable from an overt *Apprendi*/section 111-3(c-5) challenge: he complained that the imposition of an extended-term sentence was impermissible in the absence of the facts necessary to permit that sentence having been alleged in the indictment as an element of the crime and proven beyond a reasonable doubt to a jury.

¶ 27 *Apprendi* does not apply retroactively on collateral review to cases in which direct appeals had been exhausted before *Apprendi* was decided. *Schriro v. Summerlin*, 542 U.S. 348, 358 (2004) (the Supreme Court's interpretation of *Apprendi* in *Ring v. Arizona*, 536 U.S. 584 (2002), where the Court held that *Apprendi* did not permit a judge, sitting without a jury, to find an aggravating circumstance necessary to impose the death penalty, should not be given retroactive effect to criminal cases in which direct appeals had been exhausted before *Ring* was decided; *Apprendi* announced new procedural rules that do "not apply retroactively to cases already final on direct review"); *People v. De La Paz*, 204 Ill. 2d 426, 439 (2003) (the procedural rule that was announced in *Apprendi* does not apply retroactively to causes in which the direct appeal process had concluded at the time that *Apprendi* was decided); *Curtis v. United States*, 294 F.3d 841, 843-44 (7th Cir. 2002) (*Apprendi* is not retroactive). The plaintiff's direct appeals were concluded when, following the affirmance of his conviction and sentence on direct appeal, he failed to pursue an appeal to the Illinois Supreme Court. *Apprendi* issued 14 years after this court decided the plaintiff's direct appeal. The amendment of the Illinois charging statute became effective 15 years after his appeal was decided. Neither *Apprendi* nor the amended statute applies to the plaintiff's conviction and sentence.

¶ 28 Moreover, in *Lucien v. Briley*, 213 Ill. 2d 340 (2004), the supreme court held that *Apprendi* did not apply retroactively to a *habeas corpus* action that challenged the validity of an extended-term sentence where the direct appeal process had long been concluded.

¶ 29 Furthermore, the plaintiff pleaded guilty—he was not found guilty by a jury. It is well established that a voluntary guilty plea forfeits all nonjurisdictional errors or irregularities, including constitutional ones. *People v. Peebles*, 155 Ill. 2d 422, 491 (1993). In *Hill v. Cowan*, 202 Ill. 2d 151 (2002), the plaintiff raised an *Apprendi* argument in the context of a *habeas corpus* complaint that was filed 18 years after his 1982 guilty plea, for which he had been sentenced to an extended term of imprisonment, and 15 years after he had exhausted his direct appeals. The supreme court stated as follows: "There is no validity to the complaint that a defendant did not 'know' that he was waiving the right to have the State prove enhancing factors beyond a reasonable doubt, because by pleading guilty the defendant releases the State from proving *anything* beyond a reasonable doubt. [Citation.] We do not require the trial court to advise a defendant of all the elements of the crime of which he stands accused before accepting a guilty plea." (Emphasis in original.) *Hill*, 202 Ill. 2d at 154-55. An *Apprendi*-based sentencing challenge cannot be raised even on direct appeal from a guilty plea. *People v. Jackson*, 199 Ill. 2d 286, 295 (2002). The *Jackson* court explained *Apprendi* as follows: "Every fact necessary to establish the range within which a defendant may be sentenced is an element of the crime and thus falls within the constitutional rights of a jury trial and proof beyond a reasonable doubt ***. But by pleading guilty, a defendant *waives exactly those rights*. A knowing relinquishment of the right to a trial by jury is the *sine qua non* of a guilty plea. Thus it is clear that *Apprendi*-based sentencing objections cannot be heard on appeal from a guilty plea." (Emphasis in original.) *Id.* at 296.

¶ 30 The plaintiff also claims on appeal that he was entitled to his release from custody because the judge "lacked jurisdiction" to impose an extended-term sentence. He asserts that the sentence was void *ab initio* because sections 5-8-1(a)(1) and 5-8-2 of the Unified Code of Corrections (Ill. Rev. Stat. 1983, ch. 38, pars. 1005-8-1(a)(1), 1005-8-2) were facially

unconstitutional and deprived him of his right to due process. The plaintiff asserts that he is entitled to an order of *habeas corpus* directing that he be immediately discharged from prison because he has served the maximum nonextended-term sentence, including his term of mandatory supervised release, that could have been imposed—40 years' imprisonment.

¶ 31 Jurisdiction over the subject matter is conferred on the circuit courts by the Illinois Constitution. *People v. Gilmore*, 63 Ill. 2d 23, 26 (1976). "Circuit Courts shall have original jurisdiction of all justiciable matters ***." Ill. Const. 1970, art. VI, § 9. The trial court obtains subject matter jurisdiction when the State's Attorney creates a justiciable controversy by leveling criminal charges against a defendant and filing them with the court. *People v. Woodall*, 333 Ill. App. 3d 1146, 1156 (2002). On May 18, 1984, the circuit court obtained subject matter jurisdiction over the controversy when the State filed the indictment against the plaintiff. Personal jurisdiction over a criminal defendant is conferred upon the court when a defendant personally appears before it. *People v. Raczkowski*, 359 Ill. App. 3d 494, 497 (2005). The trial court obtained personal jurisdiction over the plaintiff when he appeared in court to answer to the charge. "Generally, once a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction thus acquired. Accordingly, a court may not lose jurisdiction because it makes a mistake in determining *** the facts, the law[,] or both." *People v. Davis*, 156 Ill. 2d 149, 156 (1993). "[J]urisdiction is not affected by an incorrect judgment: 'jurisdiction or power to render a particular judgment does not mean that the judgment rendered must be the one that should have been rendered, for the power to decide carries with it the power to decide wrong as well as to decide right.'" *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 532 (2001) (quoting *Davis*, 156 Ill. 2d at 156).

¶ 32 Section 5-8-1(a)(1)(a) provided for the imposition by the court of a determinate sentence for murder of not less than 20 years' imprisonment or more than 40 years'

imprisonment. Ill. Rev. Stat. 1983, ch. 38, par. 1005-8-1(a)(1)(a). Under section 5-8-1(a)(1)(b), it could impose a natural-life term sentence if the offense was accompanied by exceptionally brutal or heinous behavior that was indicative of wanton cruelty or if, for example, the victim was physically handicapped at the time of the offense. *Id.* par. (a)(1)(b). Under section 5-8-2, the judge could sentence an offender to an extended term of imprisonment if he or she found the existence of factors in aggravation set forth in section 5-5-3.2 (Ill. Rev. Stat. 1983, ch. 38, par. 1005-5-3.2).

¶ 33 The void *ab initio* doctrine only applies to facially unconstitutional statutes. *People v. Gersch*, 135 Ill. 2d 384, 399 (1990) (" '[W]hen a statute is held unconstitutional *in its entirety*, it is void *ab initio*' " (emphasis added) (quoting *People v. Manuel*, 94 Ill. 2d 242, 244-45 (1983))). A statute is facially unconstitutional only if " 'no set of circumstances exists under which the Act would be valid.' " *In re C.E.*, 161 Ill. 2d 200, 211 (1994) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). The supreme court has repeatedly rejected claims that the statutes involved in this case—sections 5-5-3.2 and 5-8-2 of the Unified Code of Corrections (Ill. Rev. Stat. 1983, ch. 38, pars. 1005-5-3.2, 1005-8-2 (now see 730 ILCS 5/5-5-3.2, 5-8-2 (West 2008)))—are unconstitutional on their face. See *Lucien*, 213 Ill. 2d at 344; *Jackson*, 199 Ill. 2d at 300; *Hill*, 202 Ill. 2d at 156-57 (sections 5-5-3.2 and 5-8-2 of the Unified Code of Corrections (Ill. Rev. Stat. 1981, ch. 38, pars. 1005-5-3.2, 1005-8-2 (now see 730 ILCS 5/5-5-3.2, 5-8-2 (West 2000))) are not facially unconstitutional). Therefore, we affirm the circuit court's dismissal of the *habeas corpus* complaint included in the plaintiff's *pro se* hybrid pleading.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, the dismissal of the plaintiff's *pro se* hybrid petition for relief from judgment and *habeas corpus* complaint is reversed in part and affirmed in part. The cause is remanded to the circuit court for further proceedings.

¶ 36 Affirmed in part and reversed in part; cause remanded.