

No. 1-11-0171

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 97 CR 30179
)	
JOHNNY WILLIAMS,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Gordon and Justice Garcia concurred in the judgment.

ORDER

- ¶ 1 *Held: Sua sponte* dismissal of defendant's section 2-1401 petition for relief from judgment affirmed.
- ¶ 2 Defendant Johnny Williams appeals from the *sua sponte* dismissal of his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)) by the circuit court of Cook County. He maintains that the circuit court erred in dismissing his section 2-1401 petition *sua sponte* because the consecutive sentences imposed by the trial court were not authorized by statute, and thus void, where the trial testimony failed to show that the two attempted murder victims suffered severe bodily injury and the trial court

made no such findings.

¶ 3

BACKGROUND

¶ 4 This court previously affirmed the judgment entered following a bench trial on defendant's convictions of first degree murder and two counts of attempt to commit first degree murder and the respective, consecutive sentences of 45, 10 and 10 years' imprisonment imposed thereon. *People v. Williams*, No. 1-99-2015 (2001) (unpublished order under Supreme Court Rule 23). This court also affirmed the dismissal of defendant's 2002 *pro se* postconviction petition (*People v. Williams*, Nos. 1-02-2349 (2003) (unpublished summary order under Supreme Court Rule 23)), and the denial of his 2007 *pro se* motion for leave to file a successive postconviction petition, after granting appellate counsel leave to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987) (*People v. Williams*, No. 1-07-0875 (2008) (unpublished order under Supreme Court Rule 23)).

¶ 5 On February 20, 2009, defendant filed this *pro se* section 2-1401 petition alleging that his consecutive sentences were void since they did not conform to the statutory requirements of section 5-8-4(a) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-4(a) (West 1996)). He specifically maintained that the evidence in his case did not show severe bodily injury on either of his attempted murder victims; and, accordingly, that the consecutive sentences should be vacated and the matter remanded for resentencing. The circuit court denied the petition, and on appeal, the State filed for summary remand based on *People v. Laugharn*, 233 Ill. 2d 318 (2009), which prohibits the *sua sponte* dismissal of a section 2-1401 petition within 30 days of its filing. This court granted the State's motion, vacated the circuit court's dismissal order and remanded the cause for further proceedings consistent with *Laugharn*. *People v. Williams*, No. 1-09-1017 (2010) (dispositional order).

¶ 6 On remand, the circuit court denied defendant's section 2-1401 petition. In doing so, the court noted that it did not find any grounds for relief or remedy where the sentences defendant

received fell well within the statutory range.

¶ 7

ANALYSIS

¶ 8 On appeal, defendant contends that the circuit court erred in dismissing his section 2-1401 petition because his consecutive sentences were not statutorily authorized and thus void. He maintains that he should have received concurrent sentences where the trial testimony failed to show that the victims, Jerry Johnson and Darren Brown, suffered severe bodily injury and the trial court made no such findings on the record. Defendant thus requests this court to reverse the dismissal of his section 2-1401 petition and either order his sentences to run concurrently or remand for further proceedings.

¶ 9 The purpose of a section 2-1401 petition is to bring facts to the attention of the circuit court which, if known at the time of judgment, would have precluded its entry. *People v. Haynes*, 192 Ill. 2d 437, 463 (2000). To obtain relief under this section, a defendant must file a petition no later than two years after the entry of the order of judgment (735 ILCS 5/2-1401 (West 2008)), and set forth a meritorious defense or claim, show due diligence in presenting that defense or claim to the circuit court and show due diligence in filing the petition (*People v. Glowaki*, 404 Ill. App. 3d 169, 171 (2010)). Absent an evidentiary hearing on a petition, our review of the dismissal of a section 2-1401 petition is *de novo* (*People v. Vincent*, 226 Ill. 2d 1, 14-15 (2007)), and we may affirm that dismissal on any basis supported by the record, regardless of the reasoning or the grounds relied upon by the circuit court (*People v. Harvey*, 379 Ill. App. 3d 518, 521 (2008)).

¶ 10 In this case, defendant's section 2-1401 petition was filed eight years after the two-year limitations period expired. 735 ILCS 5/2-1401(c) (West 2008). Defendant contends that he is not barred from seeking relief because he is attacking a void sentence. Although a void judgment may be challenged at any time (*People v. Harvey*, 196 Ill. 2d 444, 447 (2001); *People v. Johnson*, 2011 IL App (1st) 092817, ¶ 89), the initial question is whether the sentence is void (*People v.*

Balle, 379 Ill. App. 3d 146, 151 (2008); *People v. Lott*, 325 Ill. App. 3d 749, 751-52 (2001)).¹

¶ 11 Section 5-8-4(a) of the Code (730 ILCS 5/5-8-4(a) (West 1996)), in effect at the operative time provided that the court shall not impose consecutive sentences for offenses that were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective, unless one of the offenses for which the defendant was convicted was a Class X or Class 1 felony and the defendant inflicted severe bodily injury, in which event the court shall enter sentences to run consecutively. At the time defendant committed these crimes in 1996, murder was not a triggering offense for consecutive sentencing under this section. *People v. Whitney*, 188 Ill. 2d 91, 99-100 (1999). However, attempt to commit first degree murder was a Class X felony (720 ILCS 5/8-4(c)(1) (West 1996)) and thus consecutive sentences were mandated in the event that the victims suffered severe bodily injury. In this regard, there is no requirement that the trial court set forth its findings on the record (*People v. Johnson*, 368 Ill. App. 3d 1146, 1170 (2006)), where the evidentiary record sufficiently sets forth a basis for such finding (See *People v. Williams*, 335 Ill. App. 3d 596 (2002)).

¶ 12 Defendant primarily maintains that the gunshot wounds he inflicted upon Johnson and Brown did not reach the standard required for consecutive sentencing. He claims that whether a defendant inflicted the requisite severe bodily injury depends upon the details of the nature and extent of the harm caused in each particular case, and that section 5-8-4(a) of the Code requires a showing of such a high degree of damage that courts repeatedly recognize that not every gunshot wound qualifies as severe bodily injury, citing *People v. Ruiz*, 312 Ill. App. 3d 49 (2000), *People v. Williams*, 335 Ill. App. 3d 596 (2002), and *People v. Johnson*, 2011 IL App (1st) 092817.

¹The State argues that this would be a situation where the sentence would only be voidable opposed to void. We disagree. If we were to decide that a finding of severe bodily injury was against the manifest weight of the evidence, then a consecutive sentence would not be statutorily authorized and thus void.

¶ 13 The State responds that the evidence of penetrating gunshot wounds in this case was more than sufficient to support a finding of severe bodily injury for both victims. The State also posits that this case is similar to *People v. Deleon*, 227 Ill. 2d 322 (2008), and *People v. Johnson*, 149 Ill. 2d 118 (1992), where single penetrating gunshot wounds were found sufficient to trigger consecutive sentencing.

¶ 14 A trial court's determination that a bodily injury is severe for purposes of consecutive sentencing may be reversed if it is against the manifest weight of the evidence. *Deleon*, 227 Ill. 2d at 332. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary or not based on the evidence presented. *Deleon*, 227 Ill. 2d at 332. A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of the witnesses, the weight to be given the evidence, or the inferences to be drawn. *Deleon*, 227 Ill. 2d at 332.

¶ 15 Whether there was severe bodily injury for consecutive sentencing purposes is determined from the specific facts of each case. See *e.g.*, *Deleon*, 227 Ill. 2d at 334-35; *Ruiz*, 312 Ill. App. 3d at 62-63. Here, the record shows that when defendant started shooting, Johnson fled, and as he did so, he was shot in the upper left thigh. After being shot, he continued to flee for a couple of blocks as the shooting continued. He fled to a store where he called his brother to take him home and to the hospital. His brother brought him home first but then took him to the hospital where the bullet lodged in Johnson's leg was removed. "[A]fter a little while" there, he went home.

¶ 16 The evidence further showed that defendant shot Brown in the arm and that the bullet exited through the other side of it. After being shot, Brown fled as he continued to hear multiple shots being fired in his direction, then flagged down police and told them his friend was still behind him, and that they needed to check on him. The officers told him they would call for another squad car to check on his friend, but that they were taking him straight to the hospital.

At the time, Brown was bleeding and in shock. At the hospital, Brown was treated for his wounds and he was left with scars still visible three years later.

¶ 17 We find these injuries similar to those found by the supreme court to constitute severe bodily injury in *Deleon* and *Johnson*. In *Deleon*, the supreme court determined that the evidence of the victim's through-and-through gunshot wound to the chest, without any information as to the length of the victim's hospital stay, nature of his treatment or the intensity of his pain, was more than sufficient to support the trial court's finding that the victim sustained a severe bodily injury. *Deleon*, 227 Ill. 2d at 332-34. The supreme court also noted that the victim's subsequent actions of driving to a gas station, collecting a bullet from his sweater and asking for help at the station and waiting there for police to arrive did not render the injury benign, and that defendant's argument that it did was severely undermined by *Johnson*, in which severe bodily injury was found to have been sufficiently proven where, after being shot once in the shoulder, the victim walked out of the apartment where the shooting occurred, flagged down a passing motorist, told the driver there had been a robbery and shooting and had the driver take him to the hospital. *Deleon*, 227 Ill. 2d at 334-35 (citing *Johnson*, 149 Ill. 2d at 128-29, 159).

¶ 18 Here, as in *Deleon*, 227 Ill. 2d at 335, the victim Brown received a through-and-through wound to his arm which left him bleeding, placed him in shock and left scars on his arm. The other victim here, Johnson, as in *Johnson*, 149 Ill. 2d at 128-29, 159, received a penetrating gunshot wound to the thigh, which also required removal of the lodged bullet at a hospital. We further observe, as in *Deleon* and *Johnson*, the victims' subsequent actions after being shot, which included fleeing from gunfire, did not render their injuries benign. *Deleon*, 227 Ill. 2d at 335; *Johnson*, 149 Ill. 2d at 128-29, 159.

¶ 19 Defendant claims that there is "little practical difference" between the injuries Brown and Johnson received and an injury that did not qualify as severe bodily injury in *Ruiz*, 312 Ill. App. 3d 49. In *Ruiz*, an officer received a nick or graze wound from a bullet which was barely visible

and for which he did not seek medical treatment until after attending a police meeting. *Ruiz*, 312 Ill. App. 3d at 53, 63. Based on those facts, this court found on direct appeal that the wound was not a severe bodily injury for sentencing purposes. *Ruiz*, 312 Ill. App. 3d at 62-63. Here, unlike *Ruiz*, Brown's through-and-through gunshot wound which placed him in shock and left scars three years later, and the penetrating gunshot wound to Johnson's thigh which required the removal of a lodged bullet, were far more significant than the injuries in *Ruiz* and the case it relied upon, *People v. Durham*, 303 Ill. App. 3d 763, 770 (1999) (*leave to appeal denied and judgment vacated*, 186 Ill. 2d 575 (1999)), in which no medical attention was required.

¶ 20 In addition, we find defendant's reliance on *Williams*, 335 Ill. App. 3d 596, and *Johnson*, 2011 IL App (1st) 092817, misplaced. *Williams* was a direct appeal that was remanded for factual findings on whether there was severe bodily injury. In that case, the appellate court found that a remand was necessary as the record was insufficient for it to determine whether the victims had suffered severe bodily injury. In *Johnson*, which involved a codefendant of the defendant in *Williams* who was tried simultaneously for the crimes against the same victims, the court did not evaluate the issue of whether there was severe bodily injury requiring consecutive sentencing, but, rather, deferred to the trial court's decision on remand in *Williams* where the trial court, after further consideration, determined that there was no severe bodily injury. *Johnson*, ¶¶ 90-91.

¶ 21 CONCLUSION

¶ 22 Based on the above, we conclude the findings that the injuries inflicted upon the two victims constituted severe bodily injury was not against the manifest weight of the evidence, and therefore, the consecutive sentences imposed in this case are not void. As a result, defendant failed to state cause for relief under section 2-1401, and the circuit court did not err in dismissing his petition. *Lott*, 325 Ill. App. 3d at 752.

¶ 23 We, therefore, affirm the order of the circuit court of Cook County.

¶ 24 Affirmed.

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