

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).

2012 IL App (3d) 110069-U

Order filed February 23, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-11-0069
)	Circuit No. 99-CF-82
)	
DeMARKUS BAILEY,)	Honorable
)	Gerald R. Kinney,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Wright and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing defendant's 2-1401 petition for relief from judgment.

¶ 2 After pleading guilty to aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2000)) in 2000, defendant, DeMarkus Bailey, filed a petition under section 2-1401 of the Code of Civil Procedure (Code) for relief from judgment. 735 ILCS 5/2-1401 (West 2010). The trial court dismissed defendant's petition, and defendant appeals. We affirm.

¶ 3

FACTS

¶ 4 On May 8, 2000, defendant pled guilty to aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2000)) and was sentenced to 20 years in prison. The factual basis for the plea stated that on January 18, 1999, defendant sexually assaulted the victim after attacking her with a stun gun.

¶ 5 On September 15, 2010, defendant filed a "Petition to Vacate Void Judgment" under section 2-1401 of the Code. 735 ILCS 5/2-1401 (West 2010). Defendant's petition alleged that his 20-year prison sentence was void because part of the truth-in-sentencing statute (730 ILCS 5/3-6-3 (West 2000)), enacted by Public Act 89-404 (eff. August 20, 1995), was ruled unconstitutional by our supreme court in *People v. Reedy*, 186 Ill. 2d 1 (1999). The State filed a motion to dismiss defendant's petition, arguing that it was filed more than two years after defendant's conviction. The court dismissed defendant's petition, stating that "the truth-and-sentencing [*sic*] statute was in effect at the time the crime was committed and as a consequence, controls the sentencing imposed upon [defendant]." Defendant appeals.

¶ 6

ANALYSIS

¶ 7 Defendant argues that the trial court erred in dismissing his 2-1401 petition because his 20-year prison sentence was entered under law that was held unconstitutional.

¶ 8 Section 2-1401 of the Code establishes a procedure for the vacatur of a final judgment that is older than 30 days. 735 ILCS 5/2-1401(a) (West 2010). However, section 2-1401 petitions must not be filed later than two years after the entry of an order or judgment. 735 ILCS 5/2-1401(c) (West 2010). An exception to the two-year period has been recognized where: (1) the judgment being challenged is void; (2) a clear showing has been made that the person seeking

relief is under legal disability or duress or the grounds for relief are fraudulently concealed; or (3) the opposing party waives the limitation period. *People v. Harvey*, 196 Ill. 2d 444 (2001).

¶ 9 In the present case, defendant's petition was properly dismissed because it was filed more than two years after the entry of his conviction and none of the exceptions to the limitations period apply. We find no merit to defendant's argument that his sentence was void because part of the truth-in-sentencing statute (730 ILCS 5/3-6-3 (West 2000)), enacted by Public Act 89-404, was ruled unconstitutional. See *Reedy*, 186 Ill. 2d 1. We note that Public Act 90-592 (eff. June 19, 1998) "deleted and recodified the entire truth-in-sentencing legislation originating from Public Act 89-404." *Reedy*, 186 Ill. 2d at 17. Public Act 90-592 was in effect on the date of defendant's offense and sentencing; therefore, defendant's sentence was proper under the truth-in-sentencing statute (730 ILCS 5/3-6-3 (West 2000)).

¶ 10 CONCLUSION

¶ 11 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 12 Affirmed.