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2012 IL App (3d) 110092-U

Order filed February 10, 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. 3-11-0092
)	Circuit No. 07-CF-903
JUAN C. GALLARDO,)	
)	Honorable
Defendant-Appellant.)	Richard C. Schoenstedt,
)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's section 2-1401 petition was untimely, and therefore it was properly dismissed by the trial court.

¶ 2 On June 22, 2007, defendant pled guilty to possession of a controlled substance (720 ILCS 570/402(c) (West 2006)) and was sentenced, on the same day, to probation pursuant to section 410 of the Illinois Controlled Substances Act (Act). 720 ILCS 570/410 (West 2006). On October 28, 2010, defendant filed a petition for postjudgment relief pursuant to section 2-1401 of

the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). The petition alleged that the trial court failed to admonish him that his guilty plea could result in certain immigration consequences. The trial court dismissed defendant's petition for failure to state a cause of action and as untimely. Defendant appeals, arguing that the petition should not have been dismissed because: (1) his petition was timely filed; and (2) it was not necessary for him to allege in the petition or by affidavit that he would not have pled guilty had he known the immigration consequences of his plea.

¶ 3 A section 2-1401 petition provides a forum in which to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and the court at the time the judgment was entered, which, if then known, would have prevented the judgment. *People v. Haynes*, 192 Ill. 2d 437 (2000). It is not, however, designed to provide a general review of all trial errors nor to substitute for direct appeal. *Id.* We review a dismissal of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1 (2007).

¶ 4 A section 2-1401 petition must be filed no later than two years after the entry of the order or judgment. 735 ILCS 5/2-1401(c) (West 2010). In this case, defendant was sentenced to probation for a violation of the Act. According to section 410(g) of the Act, a disposition of probation under the Act is considered to be a conviction for the purposes of appeal. 720 ILCS 570/410(g) (West 2006). Because defendant pled guilty and was sentenced on June 22, 2007, the two-year period in which to file a section 2-1401 petition elapsed on June 22, 2009. Thus, when defendant filed his section 2-1401 petition on October 28, 2010, it was untimely and properly dismissed by the trial court.

¶ 5 We note that defendant also contends that the trial court erred when it dismissed his petition for failure to state a cause of action. While we agree with the trial court regarding this issue (see 735 ILCS 5/2-1401(b) (West 2010)), it is not necessary to discuss it because we have already found grounds to affirm the trial court's dismissal of defendant's petition.

¶ 6 CONCLUSION

¶ 7 The judgment of the circuit court of Will County is affirmed.

¶ 8 Affirmed.