

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 (4th) 101014-U

Filed 9/6/12

NO. 4-10-1014

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
LENARD LAWRENCE,	)	No. 06CF1220
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

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JUSTICE COOK delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* We grant the office of the State Appellate Defender's motion to withdraw as appellate counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirm the trial court's dismissal of defendant's petition for relief from judgment pursuant to section 2-1401 (735 ILCS 5/2-1401 (West 2010)) where defendant's petition, asserting his armed robbery conviction was void because the record did not contain a placita or convening order, did not present a meritorious claim.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 5, 2006, a jury convicted defendant, Lenard Lawrence, of armed robbery, a Class X felony (720 ILCS 5/18-2(a)(2), (b) (West 2006)). In July 2006, defendant robbed a Dollar General store in Champaign, Illinois, while armed with a firearm and severely

beat an employee during the robbery.

¶ 5 In November 2006, the trial court sentenced defendant to 30 years' imprisonment and found defendant's conduct caused great bodily harm to the victim (730 ILCS 5/5-4-1(c-1) (West 2006)). Defendant appealed, arguing the trial court (1) committed plain error when it misread a jury instruction and (2) abused its discretion in allowing the jury to see a partially redacted copy of defendant's May 2006 job application to Dollar General. This court affirmed the trial court's judgment. *People v. Lawrence*, No. 4-06-1068 (June 12, 2008) (unpublished order under Supreme Court Rule 23).

¶ 6 On February 17, 2009, defendant filed a postconviction petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2008)), arguing ineffective assistance of trial and appellate counsel. On February 23, 2009, the trial court summarily dismissed defendant's postconviction petition. This court affirmed the trial court's judgment. *People v. Lawrence*, No. 4-09-0173 (Dec. 28, 2010) (unpublished order under Supreme Court Rule 23).

¶ 7 On November 1, 2010, defendant filed the instant petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)) asserting his conviction is void because the trial court record did not contain a placita or convening order. On November 5, 2010, the State filed a motion to dismiss. On November 16, 2010, the trial court summarily dismissed defendant's petition.

¶ 8 On December 13, 2010, defendant filed a notice of appeal with the trial court and the court appointed OSAD to serve as his attorney. On February 27, 2012, OSAD moved to withdraw as appellate counsel, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the

motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by March 29, 2012. Defendant has not done so. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the court's judgment.

¶ 9

## II. ANALYSIS

¶ 10 OSAD argues defendant's petition presents no meritorious issues. Specifically, OSAD asserts defendant's contention his armed robbery conviction is void because "the trial court record in this case does not contain a placita or convening order" fails to present a meritorious basis for a section 2-1401 petition. We agree.

¶ 11 Section 2-1401 allows for relief from final judgments more than 30 days after their entry. 735 ILCS 5/2-1401(a) (West 2010). A section 2-1401 petition "must be filed not later than 2 years after the entry of the order or judgment." 735 ILCS 5/2-1401(c) (West 2010). Relief under section 2-1401 is predicated upon proof, by a preponderance of evidence, of a defense or claim that would have precluded entry of the judgment in the original action, and diligence in discovering the defense or claim and presenting the petition. *People v. Vincent*, 226 Ill. 2d 1, 7-8, 871 N.E.2d 17, 22 (2007). To be entitled to relief under section 2-1401, the petitioner must 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. *People v. Bramlett*, 347 Ill. App. 3d 468, 473, 806 N.E.2d 1251, 1255 (2004) (quoting *In re Estate of Barth*, 339 Ill. App. 3d 651, 662, 792 N.E.2d 315, 324 (2003)). Claims that could have been made on direct appeal are barred under principles of *res judicata* and collateral

estoppel. *People v. Burrows*, 172 Ill. 2d 169, 187, 665 N.E.2d 1319, 1327 (1996).

¶ 12 OSAD correctly asserts a "placita" is no longer required for a record on appeal. At common law, a placita showed trial level proceedings were had before a regularly convened and organized court. *People v. Wallack*, 329 Ill. 195, 197, 160 N.E. 116, 117 (1928); *Allied Coal & Mining Co. v. Andrews*, 318 Ill. App. 415, 416, 48 N.E.2d 563, 564 (1943). A "placita" generally contained information indicating in what circuit court the matter was pending, the term time, the date on which the order was made, the convening of court, the presiding judge, and other proper officers of the court. *People v. McCurrie*, 337 Ill. 290, 295-96, 169 N.E. 214, 216 (1929). These requirements could be met through a showing in the record the court was duly convened. *People v. Hughes*, 386 Ill. 414, 415-16, 54 N.E.2d 496, 497 (1944); *People v. Anderson*, 397 Ill. 583, 585, 74 N.E.2d 693, 694 (1947). The absence of a placita or convening order of the trial court was a fatal defect on appeal. See *Planing Mill Lumber Co. v. City of Chicago*, 56 Ill. 304, 1870 WL 6524 (1870) (reversing 31 cases for failure to contain a placita or convening order). When the Illinois Supreme Court revised Rule 608 in 1986 (Ill. S. Ct. R. 608(a)(1) (eff. Aug. 1, 1986) (requiring "a cover sheet showing the title of the case")), it substituted the term "cover sheet" for the word "placita" (Ill. S. Ct. R. 608(a)(1) (eff. Apr. 1, 1982) ("a placita showing the title of the case")).

¶ 13 In addition to Rule 608 not requiring a placita, as OSAD points out, a placita or convening order is not required to show the trial court was regularly convened and organized because Illinois circuit courts are always open for the transaction of business, subject to adjournment from time to time (705 ILCS 35/4 (West 2010)). Indeed, the legislature repealed terms of court for the circuit court effective January 1, 1964. An act approved August 9, 1963

(eff. Jan. 1, 1964) (1963 Laws 2642) (amending section 4 of the Circuit Courts Act (Ill. Rev. Stat. 1965, ch. 37, ¶ 72.4 (now 705 ILCS 35/4 (West 2010))).

¶ 14 In the instant case, a placita is not required and the cover sheet on appeal, which is what was required at the time of the robbery and since, is in conformity with Rule 608(a) (Ill. S. Ct. R. 608(a) (eff. Dec. 13, 2005)). Rule 608(a) supplants the common-law placita requirement. Defendant has not shown how this issue could not have been presented on direct appeal as he claims the trial record is deficient. Also, we have found no Illinois court granting relief from judgment pursuant to section 2-1401 for the absence of a placita. As such, defendant's claim his conviction is void because the trial record does not contain a placita or convening order is without merit. Additionally, assuming *arguendo* a placita is still required, the record cover sheets, charging instrument, orders, judgments, transcripts, and the certification of the circuit clerk all contain information required by the common-law placita requirement.

¶ 15 Last, the trial court's denial of defendant's request to reply to the State's motion to dismiss does not warrant correction. Trial courts have the inherent authority to control their dockets and dismiss section 2-1401 petitions that are frivolous and without merit (*Bramlett*, 347 Ill. App. 3d at 472, 806 N.E.2d at 1254 (quoting *Mason v. Snyder*, 332 Ill. App. 3d 834, 842, 774 N.E.2d 457, 463-64 (2002))) and the court may dismiss a claim without permitting a reply where the defendant is not entitled to relief as a matter of law (*Vincent*, 226 Ill. 2d at 12, 871 N.E.2d at 25). The State responded to defendant's petition within 30 days and the matter was ripe for adjudication by the court when it dismissed defendant's petition (*People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009)). Moreover, defendant's request for leave to file a reply was not filed until November 18, 2010, two days after the court dismissed his section 2-1401

petition. As defendant's petition is without merit as a matter of law, the trial court did not err by dismissing defendant's petition without permitting a reply.

¶ 16

### III. CONCLUSION

¶ 17 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 18 Affirmed.