



Therefore, we now grant the motion of the State Appellate Defender to withdraw as counsel and affirm the judgment of the circuit court of Madison County based on the following.

¶ 3

### BACKGROUND

¶ 4 The defendant was originally charged with three counts of first-degree murder on November 13, 1997, relating to the death of a 13-month-old child. On March 27, 2001, the State filed a notice of intent to seek an extended-term sentence pursuant to section 5-5-3.2(b)(4)(i) of the Unified Code of Corrections (730 ILCS 5/5-5-3.2(b)(4)(i) (recodified as 730 ILCS 5/5-5-3.2(b)(3)(i) (West 2010))), because the victim was under 12 years of age. On March 29, 2001, the State filed an amended indictment charging the defendant with two counts of first-degree murder, one count of which was felony murder pursuant to section 9-1(a)(3) of the Criminal Code of 1961 (720 ILCS 5/9-1(a)(3) (West 2000)). The felony murder charge was not included in the original three-count indictment. The case went to trial on April 2, 2001. Following the presentation of evidence, the State dismissed the felony murder charge. Along with the instruction on first-degree murder, the jury was given a special interrogatory that asked if the victim was under the age of 12 at the time of death. In order to answer in the affirmative, the jury was instructed that it must find the victim to have been under the age of 12 beyond a reasonable doubt. The defendant was found guilty of first-degree murder, and the jury determined that the victim was under the age of 12 at the time of the killing. On July 11, 2001, judgment was entered, and the defendant was sentenced to an extended term of 70 years in prison. The extension was based upon the jury's finding that the victim was under the age of 12 at the time of the killing. This court affirmed the defendant's conviction. *People v. O'Quinn*, 339 Ill. App. 3d 347 (2003). The defendant filed a petition for postconviction relief, which was dismissed by the circuit court. This court affirmed the dismissal. *People v. O'Quinn*, No. 5-09-0305 (2011) (unpublished order under Supreme Court Rule 23). The defendant filed a petition for relief from judgment pursuant

to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)) on September 30, 2010, and the circuit court dismissed it. The defendant filed a motion to reconsider, and it was denied.

¶ 5

#### ANALYSIS

¶ 6 In his postjudgment petition, the defendant asserts that the judgment of the circuit court was void due to lack of jurisdiction as a result of several errors. First, the defendant asserts that the court erred in applying the amended version of section 111-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3 (West 2000)). The amendment of section 111-3 was effective as of February 23, 2001 (see Pub. Act 91-953), and the defendant's trial began in April 2001. Subsection (c-5) was added, and it required that whenever a fact, not an element of an offense, is utilized to increase the defendant's penalty beyond the statutory maximum, such fact must be proved beyond a reasonable doubt. 725 ILCS 5/111-3(c-5) (West 2000); see also *People v. Quinn*, 339 Ill. App. 3d 347, 362-63 (2003). Additionally, the amendment required that a defendant be given written notice of the fact that the State seeks to prove, or that the fact be included in the charging instrument. *Id.*

¶ 7 The defendant also asserted voidness of judgment on the following grounds: (1) the extended-term sentence based upon the jury's answer to the special interrogatory regarding the age of the victim constituted an impermissible double enhancement, (2) the court erred in allowing the State to "constructively amend the charge" via the interrogatory instruction to include the age of the victim, (3) the court erred in not presenting the interrogatory regarding the age of the victim in bifurcated proceedings, and (4) the court erred in allowing the superseding indictment filed five days before trial that charged the defendant with felony murder. In his petition, the defendant also asserted that he was not provided a written copy of the amended indictment, and that the court erred in not allowing him a continuance to defend against the State's amended charges. The defendant argued that the judgment against

him was void, and therefore, the court erred in dismissing his petition as untimely.

¶ 8 The purpose of a petition for relief from judgment under section 2-1401 (735 ILCS 5/2-1401 (West 2010)) is "to bring before the trial court facts not appearing in the record which, if known to the trial court at the time judgment was entered, would have prevented the judgment." *Physicians Insurance Exchange v. Jennings*, 316 Ill. App. 3d 443, 457 (2000) (citing *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273 (1982); *In re Charles S.*, 83 Ill. App. 3d 515 (1980); *Klein v. Steel City National Bank*, 212 Ill. App. 3d 629 (1991)). "[W]here a section 2-1401 petition is filed beyond two years after the judgment was entered, it [generally] cannot be considered." *People v. Caballero*, 179 Ill. 2d 205, 210-11 (1997) (citing 735 ILCS 5/2-1401(c) (West 1992); *People v. Logan*, 49 Ill. App. 3d 787, 790 (1977)). "[T]he two-year limitation \*\*\* must be adhered to in the absence of a clear showing that the person seeking relief is under legal disability or duress or the grounds for relief are fraudulently concealed." *Id.* (citing *Crowell v. Bilandic*, 81 Ill. 2d 422, 427 (1980); *People v. Berland*, 74 Ill. 2d 286 (1978)). Nonetheless, even where legal disability, duress, or fraudulent concealment are not claimed, a defendant may still proceed on a petition for relief from judgment outside the two-year period where the judgment is challenged on voidness grounds. *People v. Moran*, 2012 IL App (1st) 111165, ¶ 13 (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)). The Illinois Supreme Court "has 'consistently held that a judgment is void if and only if the court that entered it lacked jurisdiction.'" *Id.* ¶ 15 (quoting *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 16 (citing *People v. Davis*, 156 Ill. 2d 149 (1993)), and citing *People v. Coady*, 156 Ill. 2d 531 (1993); *In re M.W.*, 232 Ill. 2d 408, 414 (2009)). There are "three elements of jurisdiction: (1) personal jurisdiction; (2) subject matter jurisdiction, and (3) the power to render the particular judgment or sentence." (Internal quotation marks omitted.) *Id.* ¶ 17 (quoting *People v. Davis*, 156 Ill. 2d 149, 156 (1993)). With regard to the third element, "jurisdiction

or power to render a particular judgment does not mean that the judgment rendered must be 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.' " *Id.* (quoting *Davis*, 156 Ill. 2d at 156). The Illinois Supreme Court has indicated that errors by the circuit court will not divest it of jurisdiction: " '[O]nce 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 either the facts, the law or both.' " *Id.* (quoting *Davis*, 156 Ill. 2d at 156).

¶ 9 Judgment was entered against the defendant on July 11, 2001, yet the defendant did not file his petition for relief from judgment until September 30, 2010. The defendant did not claim legal disability or duress or fraudulent concealment of grounds for relief, nor is there anything in the record affording merit to such claims. Therefore, if the defendant is to prevail in his appeal, he must demonstrate that the judgment against him is void due to lack of jurisdiction. All of the defendant's arguments on appeal allege lack of jurisdiction based on alleged errors of law by the court. It is unnecessary to address these assigned errors because even if the circuit court erred, it would not be sufficient to divest the court of jurisdiction and render the judgment void, thereby relieving the defendant of the two-year statutory period within which a petition for relief from judgment must be filed. The defendant's petition was untimely, and he has not claimed legal disability or duress or that the grounds for relief were fraudulently concealed. Nor can the defendant show that the judgment was void for lack of jurisdiction. Nor are there any indications in the record that merit exists with regard to any such claims. Therefore, the circuit court did not err in dismissing the petition on the basis that it was untimely.

¶ 10 CONCLUSION

¶ 11 The judgment of the circuit court is affirmed, and the motion of the State Appellate

Defender is granted.

¶ 12 Judgment affirmed; motion granted.