



appeal. For the following reasons, we now grant the State Appellate Defender's motion to withdraw as counsel on appeal, and we affirm the judgment of the circuit court of Madison County.

¶ 3 On June 15, 2001, Wade entered an open plea of guilty to one count of first-degree murder in connection with the murder of cab driver Ronald Hempel, who had been shot five times during the course of a robbery. Wade agreed to testify against his codefendants in exchange for the State's agreement to recommend a sentence of between 20 and 60 years' imprisonment, rather than to seek an extended-term sentence, and to dismiss the remaining charges, one of which was punishable by death. The State's factual basis for the plea included Wade's videotaped confession that he shot the cab driver, the confession of a codefendant who had been present at the time of the murder, and the statement of Veronica Mitchell that she had called the cab company to have Hempel's cab dispatched to the scene of the robbery. Sentencing was postponed until after Wade fulfilled his obligations under the plea. At the sentencing hearing Wade made a statement in allocution admitting that he had shot Hempel. The trial court sentenced Wade to 32 years' imprisonment.

¶ 4 Wade subsequently filed a motion to withdraw his guilty plea and vacate his sentence. Wade argued that trial counsel had provided ineffective representation by failing to formulate a defense strategy, refusing to file a motion to withdraw his plea, and deceiving Wade into entering his plea by telling him that if he pleaded guilty and testified against his codefendants he would be sentenced to only 20 years' imprisonment. Attorney Harry Anderson was appointed to represent Wade.

¶ 5 At the hearing on the motion, Wade testified that trial counsel had guaranteed him a 20-year sentence if he pled guilty and that trial counsel had failed to call several alibi witnesses. Attorney Steve Griffin, who had represented Wade during the plea negotiations, testified that Wade had admitted shooting the cab driver. Griffin was also aware that one

of Wade's codefendants had given a statement indicating that Wade had shot the cab driver and that Wade's girlfriend had given a statement indicating that Wade had admitted to her that he shot the cab driver. Griffin testified that Wade had mentioned a couple of alibi witnesses and that he had spoken to one of them but had determined that she was not credible. Griffin denied telling Wade that he would receive a 20-year sentence. Griffin was asked about two statements given by Jessie Smith, one in which Smith admitted to the murder and one in which Smith implicated Wade. Griffin believed that he had discussed both statements with Wade. The trial court denied Wade's motion to withdraw his guilty plea. Wade appealed and this court affirmed. *People v. Wade*, No. 5-04-0627 (May 21, 2007) (unpublished order pursuant to Supreme Court Rule 23).

¶ 6 On August 22, 2008, Wade filed *pro se* a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2008)), arguing that he had been denied the effective assistance of counsel. The circuit court summarily dismissed Wade's postconviction petition and this court affirmed. *People v. Wade*, No. 5-08-0649 (May 24, 2010) (unpublished order pursuant to Supreme Court Rule 23).

¶ 7 On September 27, 2010, Wade filed *pro se* a petition for postjudgment relief pursuant to section 2-1401(f) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(f) (West 2008)), alleging that the indictment was void because it had been obtained using perjured testimony. The State filed a motion to dismiss, arguing that Wade's petition for postjudgment relief was untimely and that he failed to demonstrate that the judgment against him was void. The trial court granted the State's motion and dismissed Wade's postjudgment petition. Wade appeals.

¶ 8 Section 2-1401 of the Code provides a comprehensive statutory procedure for defendants to challenge final orders and judgments more than 30 days after they have been entered. *People v. Sims*, 378 Ill. App. 3d 643, 646, 880 N.E.2d 1148, 1151 (2007) (citing

*People v. Pinkonsly*, 207 Ill. 2d 555, 562, 802 N.E.2d 236, 241 (2003)). Although a petition for relief from judgment brought pursuant to section 2-1401 must generally be filed within two years after the entry of the order or a judgment, section 2-1401(f) provides that where a defendant challenges a judgment as being void, he may seek relief beyond the two-year limitations period. 735 ILCS 5/2-1401(f) (West 2006); *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104, 776 N.E.2d 195, 201-02 (2002); *People v. Harvey*, 196 Ill. 2d 444, 452, 753 N.E.2d 293, 295 (2001). Dismissal of a section 2-1401 petition is subject to *de novo* review. *People v. Vincent*, 226 Ill. 2d 1, 8, 871 N.E.2d 17, 23 (2007).

¶ 9 In his petition for postjudgment relief, Wade argued that his conviction was void because the State presented perjured testimony to the grand jury. Specifically, Wade alleged that Detective Rodi testified before the grand jury that Wade had confessed that, prior to the murder, he had called Veronica Mitchell and asked her to call the cab company and that she did so. Wade claimed that Rodi perjured himself when he did not tell the grand jury that the police had discovered that no phone call had been placed to the cab company from Mitchell's phone during the time in question. Wade also alleged that Rodi perjured himself when he testified before the grand jury that Wade had confessed that he shot the cab driver two or three times in the back of the head. Wade alleged that in his confession, he had stated that he did not remember how many times he shot the cab driver.

¶ 10 A judgment is void only where the court lacked either subject matter or personal jurisdiction, or where it lacked the power to render the judgment or sentence in question. *People v. Raczkowski*, 359 Ill. App. 3d 494, 496-97, 834 N.E.2d 596, 599 (2005). In Illinois, circuit courts have subject matter jurisdiction over all justiciable matters, and trial courts acquire personal jurisdiction over a defendant when he or she appears before it. Ill. Const. 1970, art. VI, § 9; *Raczkowski*, 359 Ill. App. 3d at 497, 834 N.E.2d at 599. Jurisdiction is not conferred by information or indictment, and a defective charging

instrument does not deprive the circuit court of jurisdiction. See *People v. Benitez*, 169 Ill. 2d 245, 256, 661 N.E.2d 344, 349-50 (1996) (citing *People v. Gilmore*, 63 Ill. 2d 23, 26-27, 344 N.E.2d 456, 458 (1976)); *People v. Mescall*, 379 Ill. App. 3d 670, 883 N.E.2d 612 (2008). Although the State's knowing use of perjured testimony may violate a defendant's due process rights and warrant the dismissal of an indictment (*People v. Oliver*, 368 Ill. App. 3d 690, 698, 859 N.E.2d 38, 43 (2006)), it does not deprive the circuit court of jurisdiction. In the present case, even if we assume that Rodi testified falsely before the grand jury, this testimony did not deprive the circuit court of jurisdiction, and Wade's postjudgment claim that Rodi's allegedly false testimony rendered the judgment against him void must fail.

¶ 11 Moreover, defendant bears the burden of demonstrating that the State prevented the grand jury from returning a meaningful indictment by knowingly presenting perjured testimony. *People v. Shelton*, 401 Ill. App. 3d 564, 572, 929 N.E.2d 144, 154 (2010) (citing *People v. Pulgar*, 323 Ill. App. 3d 1001, 1010, 752 N.E.2d 585, 592 (2001)). The allegations in Wade's petition for postjudgment relief, even if true, fail to meet this burden.

¶ 12 In his written statement to police, Wade stated that he had asked Mitchell to call a cab and that she had done so. Thus, Rodi's testimony that Wade confessed to asking Mitchell to call a cab was accurate, and the State's failure to elicit testimony from him that phone company records indicated that no phone call had been placed to the cab company from Mitchell's phone during the time in question does not render Rodi's testimony false. The State is under no obligation "to present exculpatory information to a grand jury." *Pulgar*, 323 Ill. App. 3d at 1010, 752 N.E.2d at 592.

¶ 13 With respect to Rodi's testimony that Wade confessed to shooting the victim two or three times, we note that Wade is correct that in his statement to police he stated that he did not remember how many times he shot the victim. However, the number of times Wade shot the victim is hardly material. Wade admitted shooting the victim during the course of a

robbery. Rodi's testimony that Wade admitting shooting the cab driver two or three times, even if false, in no way prevented the grand jury from returning a meaningful indictment.

¶ 14 For the foregoing reasons, the motion of the State Appellate Defender to withdraw as counsel is granted, and the judgment of the circuit court of Madison County is affirmed.

¶ 15 Motion granted; judgment affirmed.