NOTICE
Decision filed 08/28/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110361-U

NO. 5-11-0361

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 02-CF-1479
	)	
RAMON C. WILSON,	)	Honorable
	)	Stephen P. McGlynn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: Where defendant's section 2-1401 petition was not timely filed and where defendant did not present a valid claim under section 2-1401, the circuit court's grant of the State's motion to dismiss is affirmed.

¶ 2 Defendant, Ramon C. Wilson, appeals the dismissal of his petition filed pursuant to section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2010)). He prays this court reduce his sentence by three years to reflect the offset of his mandatory supervised release (MSR) term. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Following a jury trial on April 20, 2005, defendant was convicted of first-degree murder pursuant to section 9-1(a)(1) of the Criminal Code of 1961 (720 ILCS 5/9-1(a)(1) (West 2002)). Defendant requested a new trial, which the circuit court granted on June 28, 2005. On July 9, 2007, defendant entered a fully negotiated guilty plea. Prior to accepting defendant's plea of guilty, the following colloquy occurred:

"THE COURT: If you plead guilty to a charge of first[-]degree murder, do you understand you could serve a minimum of 20 to a maximum of 60 years in prison?

THE DEFENDANT: Yes, sir.

THE COURT: It is not a probational offense. Mandatory supervised release term of three years as well as a possibility of a fine. Do you understand that's the maximum sentence you could receive?

THE DEFENDANT: Yes, sir."

Defendant was then sentenced to 20 years' imprisonment in the Illinois Department of Corrections.

¶ 5 On August 25, 2010, defendant filed a postconviction petition pursuant to section 122-1 of the Post-Conviction Hearing Act (725 ILCS 5/122-1 (West 2008)). The circuit court denied the petition on September 10, 2010. On July 8, 2011, defendant filed a petition for postjudgment relief pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)). In his petition, defendant alleged that his term of MSR was void because he was not properly admonished as to the existence of an MSR term. The State filed a motion to dismiss on July 20, 2011. The circuit court granted the State's motion to dismiss on July 21, 2011. Defendant filed his notice of appeal on August 19, 2011.

¶ 6 ANALYSIS

¶ 7 We review the dismissal of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). "The purpose of a section 2-1401 petition for relief from judgment is to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner or court at the time the judgment was entered, which, if known then, would have prevented the judgment's rendition." *People v. Harris*, 391 Ill. App. 3d 246, 249 (2009). An allegation that the circuit court failed to properly admonish a defendant is a constitutional allegation and not an allegation of an error of fact. *Id.* Relief is based not on information that arises

after the judgment is rendered, but on information that was available before the judgment was rendered that could have changed how the judgment was rendered. *People v. Haynes*, 192 Ill. 2d 437, 461 (2000).

¶ 8 A section 2-1401 petition must be filed within two years after the entry of the order or judgment (735 ILCS 5/2-1401(c) (West 2010)). The final judgment in a criminal case is the sentencing. *People v. Jake*, 2011 IL App (4th) 090779, ¶ 24. The State must raise the matter of timeliness in response to the defendant's petition. *People v. Berrios*, 387 Ill. App. 3d 1061, 1063 (2009). A void judgment is not subject to the statute of limitations contained within section 2-1401 of the Code (735 ILCS 5/2-1401(f) (West 2010)). A judgment is void when the circuit court lacked the jurisdiction to render a judgment. *People v. Raczkowski*, 359 Ill. App. 3d 494, 496-97 (2005). The jurisdictional issue may arise if the court did not have subject matter jurisdiction or personal jurisdiction, or it may result from the court exceeding its power. *Id.* A defendant may attack a void judgment either directly or indirectly at any time. *Id.*

¶ 9 In this case, defendant was sentenced on July 9, 2007. He filed his section 2-1401 petition on July 8, 2011, which is far beyond the two-year period in which he could have filed the petition. The State properly noted that defendant's petition was untimely and included that information in its motion to dismiss. The judgment was not void such that defendant could escape the two-year statute of limitation. The circuit court did not lack jurisdiction and had the requisite authority to hear the case. Defendant fails to present any information that would indicate that the circuit court lacked either personal or subject matter jurisdiction. Defendant argues that his sentence violates Supreme Court Rule 402 (Ill. S. Ct. R. 402 (eff. July 1, 1997); see *People v. Whitfield*, 217 Ill. 2d 177 (2005)). However, a *Whitfield* claim does not bear on any jurisdictional issues but rather focuses on the sentence imposed. Defendant does not allege an error of fact, as required by section 2-1401, but

instead alleges a constitutional claim regarding his sentence per *Whitfield*. Therefore, section 2-1401 is not the proper vehicle for defendant's claim.

¶ 10 Even if defendant brought his claim through the proper methods, he still would not have a valid *Whitfield* claim. Briefly, *Whitfield* allows a defendant to receive the benefit of the bargain when a sentencing court fails to properly admonish the defendant regarding an MSR term in violation of Supreme Court Rule 402 (Ill. S. Ct. R. 402 (eff. July 1, 1997); *Whitfield*, 217 Ill. 2d 177). In *Whitfield*, the circuit court failed to admonish the defendant about an MSR term in any of the proceedings. *Id.* Admonishing the defendant during the plea phase of a plea and sentencing hearing is enough to withstand a *Whitfield* claim. *People v. Marshall*, 381 Ill. App. 3d 724, 734-36 (2008).

¶ 11 This case does not fall within the purview of *Whitfield*. Prior to accepting defendant's guilty plea, the circuit court told defendant that he would be receiving a term of three years' MSR and defendant indicated that he understood. As noted above, even though the circuit court mentioned the MSR term during the plea phase rather than the sentencing phase of the hearing, the circuit court did not violate Supreme Court Rule 402 (Ill. S. Ct. R. 402 (eff. July 1, 1997); *Marshall*, 381 Ill. App. 3d at 734-36).

¶ 12 Defendant's petition was not timely, nor did he present a valid claim that would negate the statute of limitations for a section 2-1401 petition. Further, even if he was able to present a *Whitfield* argument, that argument would fail because he was properly admonished about his MSR term. We therefore affirm the reasoned judgment of the circuit court.

¶ 13 CONCLUSION

¶ 14 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 15 Affirmed.