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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 91-CM-257
)	
AGUSTIN RODRIQUEZ,)	Honorable
)	Michael B. Betar,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶1 *Held:* The trial court properly dismissed defendant's section 2-1401 petition, which alleged that the judgment of conviction was void for stating that he was convicted of domestic battery rather than battery: the court had personal and subject matter jurisdiction, and in light of the incomplete record we presume that the trial court had sufficient grounds to support its ruling.

¶2 Defendant, Agustin Rodriquez, appeals the dismissal of his petition for relief from judgment (735 ILCS 5/2-1401 (West 2010)) seeking to correct what he alleges is an error in his 1991 sentencing order, which states that he was convicted of domestic battery (Ill. Rev. Stat. 1991, ch. 38, ¶ 12-3.2). He contends that he was actually convicted of simple battery (Ill. Rev. Stat. 1991, ch. 38,

¶ 12-3(a)(1)) and that the error resulted in a void order that can be challenged at any time. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On January 15, 1991, defendant was charged by complaint with “Battery Domestic,” which cited section 12-3. He was also charged by complaint with resisting arrest (Ill. Rev. Stat. 1991, ch. 38, ¶ 31-1). The bail bond notice listed domestic battery as an offense, but did not cite a statutory section. On January 31, 1991, defendant was charged by information with simple battery under section 12-3(a)(1).

¶ 5 On April 5, 1991, defendant pleaded guilty to “domestic battery” in exchange for one year of court supervision and a fine. Defendant was also ordered to attend an interview by an intervention agency for domestic abuse, complete any program directed by that agency, and have no violent contact with the victim. No statutory section for the offense was listed in the order. The order was prepared by defendant’s attorney and signed by defendant. The minute entry stated that defendant pleaded guilty to battery in the manner and form as charged in count one of the information. Defendant’s supervision terminated in June 1992.

¶ 6 On April 1, 2011, defendant filed a section 2-1401 petition, seeking to vacate a void order and correct the record. He alleged that the 1991 order was void because it stated that he pleaded guilty to domestic battery instead of battery. He alleged that he was never charged with domestic battery and became aware of the matter when he encountered immigration issues.

¶ 7 The State moved to dismiss, alleging that the petition was untimely and that the order was not void. The trial court agreed. Thus, the court dismissed the petition, and defendant appeals.

¶ 8

II. ANALYSIS

¶ 9 Defendant contends that the order was void, resulting in his ability to attack it at any time through a section 2-1401 petition. “A convicted defendant may file a section 2-1401 petition to present errors of fact, unknown to the petitioner or the court at the time of trial, that would have caused the court to render a different decision.” *People v. Jones*, 322 Ill. App. 3d 962, 964 (2001). “Section 2-1401 establishes a process by which a litigant may appeal a judicial order more than 30 days after its entry.” *Id.* “[I]f more than two years have passed since the entry of the complained-of order, section 2-1401 relief is not available unless the petitioner can show that the delay was caused by a legal disability or duress, or that the basis for relief had been fraudulently concealed from the petitioner.” *Id.* However, a void judgment may be attacked at any time, regardless of the normal time limitations. See *People v. Harvey*, 196 Ill. 2d 444, 447 (2001) (“A person may also seek relief beyond section 2-1401’s [normal two-year limitations period] where the judgment being challenged is void.”). We review *de novo* whether the trial court erred in dismissing a defendant’s section 2-1401 petition. *People v. Vincent*, 226 Ill. 2d 1, 14 (2007).

¶ 10 A judgment is void when the court that entered it lacked jurisdiction over the parties or the subject matter or it lacked the inherent power to make or enter the judgment. *People v. Sharifpour*, 402 Ill. App. 3d 100, 120 (2010). “A void order may be attacked at any time and is not subject to procedural default.” *People v. Day*, 2011 IL App (2d) 091358, ¶ 48. “If, however, an order is improper because of a mistake of either law or fact, it is voidable and the error can be forfeited.” *Id.*

¶ 11 Here, the trial court had both personal jurisdiction and subject matter jurisdiction. The trial court obtained personal jurisdiction over defendant when he appeared before it. *Sharifpour*, 402 Ill. App. 3d at 121. It obtained subject matter jurisdiction when the State created a justiciable controversy by filing criminal charges against defendant with the court. *Id.*; see also 720 ILCS 5/1-5

(West 2010) (the trial court has subject matter jurisdiction over all criminal offenses committed in this state). Thus, the order was not void for lack of jurisdiction.

¶ 12 Any error also did not affect the court's inherent power to render a conviction. Defendant focuses on the information charging simple battery, arguing that he could not be convicted of a greater offense than that with which he was charged. But the complaint, although it cited the wrong statutory section, stated an intent to charge him with domestic battery. The filing of an information does not supersede a previous complaint, and the State may proceed on either charging instrument. See *People v. Lowell*, 75 Ill. App. 3d 1007, 1008-09 (1979). Further, the miswriting of the statutory citation in a charge is a formal rather than a substantive defect and does not render it void. See *People v. Parr*, 130 Ill. App. 2d 212, 220 (1970).

¶ 13 Here, defendant states that he is not attempting to withdraw his plea and instead is attempting to correct a mistake in the record. Yet, as previously noted, a mistake of fact or law renders the order voidable, not void. *Day*, 2011 IL App (2d) 091358, ¶ 48. Further, section 2-1401 is not intended to relieve a party of the consequences of his own negligence. *People v. Baskin*, 213 Ill. App. 3d 477, 484 (1991). If an error occurred, defendant could have corrected it at the time of the plea. But instead, defendant signed the judgment, which stated a conviction of domestic battery and required that he attend an interview by the intervention agency for domestic abuse—something clearly indicating that the intended charge was domestic battery. Thus, the confusion appears to be the result of clerical errors in the minute entry and the statutory citation in the complaint. To the extent he argues otherwise, defendant has not provided this court with a transcript of the guilty plea proceedings or a substitute for a transcript to show how he was admonished and that the error was substantive and not clerical.

¶ 14 “[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984); see also *People v. Fair*, 193 Ill. 2d 256, 264 (2000) (applying *Foutch* in a criminal appeal). In the absence of a complete record, we presume that the trial court had ample grounds supporting its determination. *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993). Accordingly, we view any error as clerical, which would not result in a void order.

¶ 15

III. CONCLUSION

¶ 16 The trial court correctly dismissed the petition. Accordingly, the judgment of the circuit court of Lake County is affirmed.

¶ 17 Affirmed.