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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	No. 88-C-1461
	)	
JOHN WALDRON,	)	Honorable
	)	Mark L. Levitt,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Justices Hutchinson and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court properly dismissed, *sua sponte*, defendant's section 2-1401 motion to vacate his convictions based on defendant's argument that the record on appeal did not contain the certificate of impanelment of the grand jury proceedings pursuant to Illinois Supreme Court Rule 608(a)(2); affirmed.

¶ 2 On June 25, 1012, defendant, John Waldron, filed a petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)), seeking to set aside his convictions and sentences for first-degree murder armed robbery. On March 13, 2013, the trial court *sua sponte* dismissed defendant's petition as frivolous and without merit. Defendant appeals, arguing that the trial court's *sua sponte* dismissal of his section 2-1401 petition was error. Specifically, defendant

argues that the trial court: (1) did not have the authority to take that action without first holding a hearing; (2) erred by ruling that defendant failed to allege facts that would provide a legal basis for relief under section 2-1401; and (3) erred by summarily dismissing his section 2-1401 petition as frivolous and patently without merit and imposing fees and costs. We affirm.

¶ 3

#### I. BACKGROUND

¶ 4 In September 1988, the State charged defendant by indictment with three counts of first-degree murder (Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(a)(1)) and two counts of armed robbery (Ill. Rev. Stat. 1987, ch. 38, ¶ 18-2(a)). Each count of the indictment contained the following language:

“That the Grand Jurors chosen, selected and sworn, in and for the County of Lake, in the State of Illinois, having been duly recalled, in the name and by authority of the People of the State of Illinois, upon their oaths \*\*\*.”

¶ 5 The charges arose out of an incident that occurred at a gas station on September 6, 1988, in Wheeling, Illinois. The evidence at defendant’s jury trial indicated that defendant pulled a gun on a gas station attendant, Thomas Goings, demanded money, and then shot Goings in the neck, killing him. Defendant then motioned another gas station attendant, Thomas Hixon, to the cash register and Hixon gave defendant all the bills from the register. Defendant fled the scene with his codefendant. The jury found defendant guilty on all five counts and the trial court sentenced him to natural life in prison on the first-degree murder convictions and two extended 60-year terms of imprisonment on the armed robbery convictions, with one 60-year term to run concurrently with and the other to run consecutively to his life sentence. On direct appeal, this court vacated two of defendant’s murder convictions, and affirmed the other convictions and sentences. *People v. Waldron*, 219 Ill. App. 3d 1017, 1048 (1991).

¶ 6 In December 2000, defendant filed a motion for postconviction relief. The trial court dismissed defendant's petition as frivolous and patently without merit in February 2001. On appeal, in an unpublished order (*People v. Waldron*, No. 2-01-0323 (Oct. 29, 2002)) (unpublished order under Supreme Court Rule 23), this court affirmed defendant's convictions and modified his sentence such that his two 60-year term sentences would run concurrently with one another, but consecutively with his natural life sentence.

¶ 7 In June 2005, defendant filed a second postconviction petition. The trial court dismissed this petition for failure to raise a gist of a claim. On appeal, this court reversed the trial court's order dismissing defendant's petition and modified defendant's sentences to run concurrently. *People v. Waldron*, 375 Ill. App. 3d 159, 161 (2007).

¶ 8 On March 31, 2008, defendant filed a *pro se* petition for *habeas corpus* that was dismissed by the trial court on May 20, 2008, for failure to state a cause of action. On January 9, 2009, defendant filed a "Request for Transcripts" that the trial court denied on January 20, 2009, because "there is nothing pending before the court in this case." On February 5, 2009, defendant filed a notice of appeal of the trial court's order denying his request for transcripts. On February 20, 2009, defendant filed an amended notice of appeal. This court granted defendant's motion to dismiss the appeal of the trial court's denial of defendant's request for transcripts. *People v. Waldron*, No. 2-09-0140.

¶ 9 On July 5, 2011, defendant filed a handwritten letter requesting a copy of the "certificate of impanelling [sic] of the Grand Jury" from the record in his case, No. 88-CF-1461. On July 6, 2011, the trial court denied defendant's request. On July 11, 2011, defendant filed a typewritten "Motion for Certificate of Impanelment." On March 16, 2012, defendant filed a handwritten letter to the trial

court requesting a copy of the transcripts of the hearing at which the trial court denied his request for a copy of the “certificate for impaneling of the grand jury.” On March 23, 2012, the trial court denied defendant’s request for transcripts from July 6, 2011, stating, “there are no motions or any legal issues pending before this court, which was the same reason [defendant’s] request was denied on July 6, 2011.”

¶ 10 On June 25, 2012, defendant filed a “Petition for Relief from Judgment Pursuant to 735 ILCS 5/2-1401.” On January 7, 2013, defendant filed a motion entitled, “Petition for Relief from Judgment Pursuant to 735 ILCS 5/2-1401 Through this Motion of ‘Lach’es [sic].” In addition, defendant requested that the trial court set his June 25 petition for a hearing at which he could be present. In his petitions, defendant argued that his convictions must be set aside as void because:

“[t]he purported grand jury which issued the indictments in [his] case were never lawfully impaneled or sworn as required by 725 55/112-1, 5/112-2, 5/112-5, ILL. Supreme Court Rule 608(a)(2), and Ill. Supreme Court dictates in *People v. Gray*, 261 Ill. 140 (1913).”

Defendant also alleged ineffective assistance of counsel for failing to raise the issue on direct appeal.

¶ 11 On March 18, 2013, the trial court dismissed defendant’s section 2-1401 petition, *sua sponte*, as frivolous and without merit. The trial court considered the January 7, 2013 petition to be a supplement to defendant’s June 25, 2012, petition. The trial court noted that defendant’s section 2-1401 petitions had been filed more than 30 days ago and that the State had not filed any pleadings in response to the petitions, and, therefore, the matter was ripe for adjudication. The trial court ruled that defendant’s argument that his convictions are void was “wholly without merit or support.” The trial court also determined that his argument regarding ineffective assistance of counsel was meritless. In addition, the trial court found that defendant had filed two section 2-1401 petitions and

that the petition that was the subject of the current litigation was frivolous. Thus, the trial court assessed defendant \$60 for filing fees and \$15 for mailing costs pursuant to sections 105/21.1a(g)(2) and 505/21 of the Court of Claims Act (705 ILCS 105/21.1a(g)(2), 505/21 (West 2012)) and section 22-105(a) of the Code of Civil Procedure (735 ILCS 5/22-105(a) (West 2012)). On April 17, 2013, defendant filed a notice of appeal from the trial court's March 18, 2013 order.

¶ 12

## II. ANALYSIS

¶ 13 On appeal, defendant argues that the trial court had no authority to *sua sponte* summarily dismiss his petition without notice and an opportunity to be heard. We review *de novo* the trial court's decision to dismiss *sua sponte* a section 2-1401 petition for relief from judgment. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007).

¶ 14 In *Vincent*, our supreme court held that a trial court may *sua sponte* dismiss a section 2-1401 petition without providing a defendant with notice of the impending ruling and the opportunity to address the court. *Vincent*, 226 Ill. 2d at 10-14. The supreme court reasoned that because section 2-1401 proceedings are subject to the usual rules of civil practice, if the State fails to answer a defendant's petition, such failure to answer constitutes an admission of all well-pleaded facts and the trial court may decide the case on the pleadings and attached documents. *Id.* at 9. Further, the supreme court held that the State's failure to answer rendered the case "ripe for adjudication." *Id.* at 10. In *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009), the supreme court held that in a case where the State fails to answer a defendant's petition, the case will not be ripe for adjudication until 30 days have passed from the time of service. *Id.* at 323. Thus, only after 30 days have passed may a trial court properly *sua sponte* dismiss a section 2-1401 petition. *Id.*

¶ 15 In this case, defendant filed his initial petition on June 25, 2012 and a second petition on January 7, 2013. The State failed to answer either petition. Thus, on March 18, 2013, well after 30 days had passed after defendant's last petition had been served, the case was ripe for adjudication. See *Vincent*, 226 Ill. 2d at 10. See also, *Laugharn*, 233 Ill. 2d at 323. Accordingly, the trial court had the authority to dismiss defendant's petitions without providing him notice or an opportunity to be heard. *Vincent*, 226 Ill. 2d at 10.

¶ 16 Defendant cites *People v. Coleman*, 358 Ill. App. 3d 1063 (2005), *People v. Edwards*, 355 Ill. App. 3d 1091 (2005), *People v. Anderson*, 352 Ill. App. 3d 934 (2004), and *People v. Pearson*, 345 Ill. App. 3d 191 (2003), to support his argument that a trial court may not dismiss a section 2-1401 petition *sua sponte* without first holding a hearing. In each of the cases cited by defendant the appellate courts held that a trial court may not *sua sponte* dismiss a section 2-1401 petition without giving the defendant notice and an opportunity to be heard. *Pearson*, 345 Ill. App. 3d at 195; *Coleman*, 358 Ill. App. 3d at 66-71; *Edwards*, 355 Ill. App. 3d at 1098-1100; *Anderson*, 352 Ill. App. 3d at 939-46. However, the cases cited by defendant were overruled, in pertinent part, by *Vincent* and *Laugharn*. *Vincent*, 226 Ill. 2d at 10-14; *Laugharn*, 233 Ill. 2d at 323. Thus, we need not discuss *Coleman*, 358 Ill. App. 3d 1063, *Edwards*, 355 Ill. App. 3d 1091, *Anderson*, 352 Ill. App. 3d 934, or *Pearson*, 345 Ill. App. 3d 191.

¶ 17 Next, defendant argues that the trial court erred by ruling that defendant failed to allege facts that would provide a legal basis for relief under section 2-1401. Specifically, defendant argues that, without a certificate from the clerk showing the impaneling of the grand jury, as required by Illinois Supreme Court Rule 608(a)(2) (eff. Dec. 13, 2005), we must presume the grand jury was not impaneled, and, thus, could not have been sworn. Defendant contends the trial court lacked

jurisdiction and, therefore, his convictions are void. He argues that because his convictions are void, the trial court erred in dismissing his section 2-1401 petition. See 725 ILCS 5/2-1401 (West 2012).

¶ 18 Although a section 2-1401 petition is usually characterized as a civil matter, relief under section 2-1401 extends to criminal cases. *People v. Gosier*, 205 Ill. 2d 198, 206 (2001). Generally, a petition for relief from judgment made pursuant to section 2-1401 must be filed within two years after the entry of the judgment being challenged. *Id.* However, there are exceptions to the two-year time period where the person seeking relief clearly shows that his delay was caused by legal disability or duress, the basis for relief was fraudulently concealed from him, or where the judgment being challenged is void. *People v. Harvey*, 196 Ill. 2d 444, 447 (2001).

¶ 19 Here, defendant filed his petitions for relief from judgment well beyond the two-year limitations period. Defendant does not argue that he was under a legal disability or duress, or that the grounds for relief were fraudulently concealed in order to excuse his late filing. Accordingly, defendant must demonstrate that the judgment is void and that it can, therefore, be challenged at any time. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002).

¶ 20 Defendant claims that, because the record does not affirmatively show the grand jury was sworn or impaneled in either case, the trial court lacked jurisdiction, thereby rendering his convictions void.

¶ 21 An indictment returned by a grand jury that was not sworn does not result in a void judgment of conviction. See *People v. Hughes*, 2012 IL 112817, ¶ 29. “[A] defendant has a right to challenge the sufficiency of a charging instrument for failing to state an offense based on statutory and due process grounds. However, a successful challenge would render the conviction voidable not void for lack of jurisdiction.” *Id.* Further, in the absence of evidence to the contrary, an indictment is

presumed valid when returned by a legally constituted jury. *People v. Bell*, 2013 IL App (3d) 120328, ¶ 7. In addition, although section 112-2 of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/112-2 (West 1994)) mandates that the grand jury be impaneled and sworn, the Criminal Procedure Code does not specify that an indictment must show its compliance with the statute. *Id.* ¶ 8.

¶ 22 Here, the indictment appears valid on its face, as it was signed by the foreman of the grand jury as a true bill, states the name of the offenses and statutory provisions, sets forth the nature and elements of each offense, the date and county of each offense and the name of the accused. See Ill. Rev. Stat. 1985, ch. 38, ¶ 111-3; now 725 ILCS 5/111-3(a), (b) (West 2012). Further each count of the indictment begins by stating that the “Grand Jurors, selected and sworn, \*\*\* upon their oaths.” Therefore, in the absence of evidence to the contrary, we presume the grand jury in each case was sworn and impaneled.<sup>1</sup>

¶ 23 Even if the record established that the jury was not sworn, defendant’s petition is still subject to section 2-1401’s two-year limitation because jurisdiction is not conferred by information or indictment, but rather, by the Illinois constitution. *People v. Benitez*, 169 Ill. 2d 245, 256 (1996). The Illinois constitution provides that the circuit court has the power to determine all justiciable matters, which includes “ ‘a controversy appropriate for review by the court \* \* \*.’ ” *Hughes*, 2012 IL 112817 at ¶ 20 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002)).

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<sup>1</sup> The record on appeal now contains a recently executed certificate of impanelment. The Clerk of Court submitted the certificate without obtaining leave of court. Because we are not persuaded the trial court reviewed and considered the merits of the certificate, we will disregard it.

¶ 24 Here, defendant was charged under the Criminal Code of 1961 with first-degree murder (Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(a)(1)) and armed robbery (Ill. Rev. Stat. 1987, ch. 38, ¶ 18-2(a)), controversies appropriate for review by the trial court. Thus, the trial court had subject matter jurisdiction. See *People v. Benitez*, 169 Ill. 2d 245, 256 (1996) (an invalid indictment does not deprive the circuit court of jurisdiction). Whether the grand jury was sworn has no effect on the trial court's power to consider defendant's criminal charge and, therefore, any defect in the grand jury proceedings would not result in a void judgment. See *Hughes*, 2012 IL 112817, ¶ 29. Without a void judgment, defendant cannot overcome the two-year limitation period required by section 2-1401. 735 ILCS 5/2-1401 (West 2010).

¶ 25 Defendant cites *People v. Gray*, 261 Ill. 140 (1913), to support his argument. In *Gray*, the record of the grand jury proceedings did not demonstrate the grand jury was sworn as required by law. *Id.* at 141. The court reversed the defendant's conviction, finding that a grand jury that was not sworn was without jurisdiction to act. *Id.* at 142. However, *Gray* was decided prior to the effective date of our current constitution, conferring trial courts with subject jurisdiction. Ill. Const. 1970, art. VI, § 9; *Hughes*, 2012 IL 112817 at ¶ 20. Further, in *Gray*, there was no evidence that "a grand jury, or any grand juror, was sworn." *Gray*, 261 at 141. In this case, each count of the indictment states that "the Grand Jurors chosen, selected and sworn, \*\*\* having been recalled, \*\* upon their oaths." Thus, in this case there is evidence that a grand jury was impaneled and sworn. Accordingly, *Gray* is distinguishable from this case.

¶ 26 Defendant also cites *People v. Houston*, 226 Ill. 2d 135 (2007) and *People v. Campbell*, 224 Ill. 2d 80 (2006), to support his argument that "All Supreme Court rules have the force of law and the presumption must be that they will be obeyed and enforced as written." In *Houston*, the Illinois

Supreme Court considered the effect of a trial court's failure to follow Rule 608(a)(9), requiring a record of the jury selection proceedings. To determine whether the defendant suffered prejudice regarding his *Batson* (*Batson v. Kentucky*, 476 U.S. 79 (1986)) and ineffective assistance of counsel claims, the supreme court remanded the case to the trial court to reconstruct the *voir dire* proceedings. *Id.* at 152-53. In this case, defendant does not argue on appeal that his counsel was ineffective because he failed to raise this claim previously, nor does he argue that there was an irregularity with the grand jury proceedings. Thus, *Houston* is not controlling.

¶ 27 In *Campbell*, the defendant was not admonished in accordance with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) prior to his bench trial, and the supreme court held the trial judge's failure to comply with the rule rendered the defendant's waiver of counsel ineffective and vacated the defendant's convictions. *Campbell*, 227 Ill. 2d at 87. The supreme court explained that "Illinois provides a right to counsel that is broader than the sixth amendment right to counsel." *Id.* at 85. Defendant in this case does not argue that he was denied the right to counsel. Further, nothing in *Campbell* or in the language of the Rule 608(a)(2) indicates that the remedy for the absence of the certificate of impanelment of the grand jury in the record of appeal is the vacation of a defendant's conviction. In addition, the record on appeal now contains a certificate of impanelment of the grand jury.

¶ 28 Defendant also argues that the trial court erred by dismissing his petition as frivolous and patently without merit. Defendant argues that the trial court was bound to follow the procedures outlined in *People v. Anderson*, 352 Ill. App. 3d 945 (2004), to proceed under section 3-6-3(d) of the Unified Code of Corrections (730 ILCS 5/3-6-3(d) (West 2010)) (allowing the revocation of

good-time credit for frivolous filings). Because the trial court did not impose a sanction under section 3-6-3(d) of the Unified Code of Corrections, we need not address this issue.

¶ 29 However, we will address the trial court’s finding that defendant’s petition was frivolous and patently without merit and its imposition of filing fees and mailing costs. Section 22-105 of the Code of Civil Procedure is entitled “Frivolous lawsuits filed by prisoners” and provides:

“(a) If a prisoner confined in an Illinois Department of Corrections facility files a pleading, motion, or other filing which purports to be a legal document in a case seeking post-conviction relief under Article 122 of the Code of Criminal Procedure of 1963, pursuant to Section 116-3 of the Code of Criminal Procedure of 1963, in a habeas corpus action under Article X of this Code, in a claim under the Court of Claims Act, or in another action against the State, the Illinois Department of Corrections, or the Prisoner Review Board, or against any of their officers or employees and the Court makes a specific finding that the pleading, motion, or other filing which purports to be a legal document filed by the prisoner is frivolous, the prisoner is responsible for the full payment of filing fees and actual court costs.

\* \* \*

(b) In this Section, ‘frivolous’ means that a pleading, motion, or other filing which purports to be a legal document filed by a prisoner in his or her lawsuit meets any or all of the following criteria:

- (1) it lacks an arguable basis either in law or in fact;” 735 ILCS 5/22-105 (2010).

¶ 30 Because defendant’s petitions had no basis in fact or in law, the trial court properly imposed filing fees and mailing costs. See 105/27.1a(g)(2) (West 2010) (authorizing court clerks to charge

a court costs fee of up to \$75 for filing a petition to vacate or modify a final court judgment); 705 ILCS 505/21 (West 2004) (authorizing a court, upon a frivolous finding, to order a petitioner to “pay all filing fees and court costs” as provided in Article XII of the Code of Civil Procedure) and 705 ILCS 505/21 (West 2004).

### III. CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 32 Affirmed.