

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).

2013 IL App (4th) 120517-U
NOS. 4-12-0517, 4-12-0518 cons.

FILED
October 22, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
MATTHEW J. REIMANN,)	Nos. 92CF83
Defendant-Appellant.)	95CF186
)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the circuit court's denial of defendant's petition for relief from judgment, concluding defendant failed to provide a sufficient record to support his claim the grand jury was not sworn and, even if the jury was not sworn, defendant's convictions were not void.

¶ 2 In January 2012, defendant, Matthew J. Reimann, filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2012)), arguing his 1992 and 1996 convictions for unlawful possession of a weapon by a person in the custody of the Department of Corrections (DOC) (Ill. Rev. Stat. 1991, ch. 38, ¶ 24-1.1(b); 720 ILCS 5/24-1.1(b) (West 1994)) were void because the record failed to show the grand jury in either case was properly sworn or impaneled. In April 2012, the circuit court denied defendant's petition, finding it was untimely and defendant waived the contentions in his

petition by failing to raise them on direct appeal.

¶ 3 Defendant appeals, arguing because the record does not show the grand jury was impaneled or sworn, defendant's convictions are void. In the alternative, defendant asserts his case should be remanded to determine whether the grand jury was sworn.

¶ 4 We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. Livingston County Case No. 92-CF-83

¶ 7 In February 1992, a grand jury indicted defendant on one count of unlawful possession of a weapon by a person in custody of a DOC facility. Ill. Rev. Stat. 1991, ch. 38, ¶ 24-1.1(b). The trial court delivered a copy of the indictment to defendant in open court and the State gave defendant the seven-page grand jury transcript in discovery. In September 1992, defendant pled guilty to the charge. Thereafter, the court sentenced defendant to four years in prison, to be served consecutive to the natural life sentence defendant was already serving. Defendant took no appeal.

¶ 8 B. Livingston County Case No. 95-CF-186

¶ 9 In October 1995, a grand jury indicted defendant on one count of unlawful possession of a weapon by a person in DOC custody (720 ILCS 5/24-1.1(b) (West 1994)) and two counts of aggravated battery (720 ILCS 5/12-4(b)(6) (West 1994)), based on the stabbing of DOC employee Eric Osborn. The trial court provided defendant a copy of the indictment in open court and the State gave defendant the grand jury transcript in discovery.

¶ 10 Following a May 1996 trial, a jury found defendant guilty of unlawful possession of a weapon and not guilty of aggravated battery. In June 1996, the trial court sentenced

defendant to 30 years' imprisonment, to be served consecutively to his life sentence. This court affirmed defendant's conviction on appeal. *People v. Reimann*, No. 4-96-0471 (Jan. 6, 1998) (unpublished order under Supreme Court Rule 23).

¶ 11 C. Postconviction Proceedings

¶ 12 In April 2010, defendant filed a petition for postconviction relief (725 ILCS 5/122-1 through 122-7 (West 2008)) and/or petition for relief from judgment (735 ILCS 5/2-1401 (West 2010)), challenging his sentences in both case No. 92-CF-83 and case No. 95-CF-186. In May 2010, the circuit court summarily dismissed defendant's petition. Defendant took no appeal.

¶ 13 Defendant filed a June 2011 letter request and a July 2011 motion in the circuit court, seeking a copy of the certificate of grand jury impanelment in each case. In July 2011, the court denied defendant's motion in each case, stating "there is nothing in the record to suggest the appellate court did not receive a complete record" and that no appeal was pending. In August 2011, defendant filed a motion to reconsider, which the court denied. Defendant filed notices of appeal, but those appeals were dismissed in November 2011. *People v. Reimann*, No. 4-11-0779 (November 10, 2011) (appeal from No. 92-CF-83 dismissed on defendant's motion); *People v. Reimann*, No. 4-11-0778 (November 10, 2011) (appeal from No. 95-CF-186 dismissed on defendant's motion).

¶ 14 In January 2012, defendant filed a petition for relief from judgment in both cases pursuant to section 2-1401 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1401 (West 2012)). Defendant alleged his convictions in case No. 92-CF-83 and No. 95-CF-186 were each void because the record did not show the grand jury was impaneled or sworn in either case. In April 2012, the circuit court denied defendant's petition, finding it was untimely filed and

defendant waived the contentions in his petition by failing to raise them on direct appeal. In May 2012, the court denied defendant's motion for rehearing.

¶ 15 Defendant filed notices of appeal, and this court docketed case No. 92-CF-83 as No. 4-12-0518 and case No. 95-CF-186 as No. 4-12-0517. In July 2012, we granted defendant's motion to consolidate the two appeals.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues his convictions are void because the record does not show in either case No. 92-CF-83 or No. 95-CF-186 that the grand jury was properly sworn or impaneled. In the alternative, defendant asserts this case should be remanded to determine whether the grand jury was sworn.

¶ 18 Section 2-1401 of the Civil Code provides that, upon petition, a circuit court may grant relief from final orders and judgments more than 30 days old. 735 ILCS 5/2-1401(a) (West 2010). Generally, a petition must be filed no later than two years after the entry of the order or judgment. 735 ILCS 5/2-1401(c) (West 2010). However, "[a] person may seek relief beyond section 2-1401's two-year limitations period where the judgment being challenged is void." *People v. Harvey*, 196 Ill. 2d 444, 447, 753 N.E.2d 293, 295 (2001).

¶ 19 Here, defendant filed his petition for relief from judgment well beyond the two-year limitations period in each case; thus, whether defendant can seek the relief he has requested turns on whether the judgments in case Nos. 92-CF-83 and 95-CF-186 are void. Defendant, citing Illinois Supreme Court Rule 608(a)(2) (eff. Dec. 13, 2005), claims that because the record does not affirmatively show the grand jury was sworn or impaneled in either case, the circuit court lacked subject-matter jurisdiction, thereby rendering his convictions void. Whether a

circuit court possessed jurisdiction is a purely legal question that we review *de novo*. *People v. Hughes*, 2012 IL 112817, ¶ 19, 983 N.E.2d 439.

¶ 20 Defendant's argument that the absence of a Rule 608(a)(2) certificate renders a conviction void was recently rejected by the Third District in *People v. Bell*, 2013 IL App (3d) 120328, 989 N.E.2d 1211. There, the court noted that an indictment is presumed valid, in the absence of evidence to the contrary, when it is returned by a legally constituted jury. *Bell*, 2013 IL App (3d) 120328, ¶ 7, 989 N.E.2d 1211 (citing *People v. Whitlow*, 89 Ill. 2d 322, 330, 433 N.E.2d 629, 632 (1982)). Further, the court stated that 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 an indictment must show its compliance with the statute. *Bell*, 2013 IL App (3d) 120328, ¶ 8, 989 N.E.2d 1211. Because the indictment in *Bell* appeared valid on its face—it was returned in open court, signed by the grand jury foreman as a true bill, and signed by the trial judge and two prosecutors—the *Bell* court concluded the defendant failed to provide a sufficient record for the court to decide his appeal. *Bell*, 2013 IL App (3d) 120328, ¶ 9, 989 N.E.2d 1211.

¶ 21 Here, both indictments appear valid, as they were each signed by the foreman of the grand jury as a true bill. See Ill. Rev. Stat. 1991, ch. 38, ¶ 111-3; 725 ILCS 5/111-3(b) (West 1994). Therefore, in accordance with *Bell*, in the absence of evidence to the contrary, we presume the grand jury in each case was sworn and impaneled.

¶ 22 Moreover, we decline defendant's request to remand his case to determine whether the grand juries were sworn and impaneled. First, we note defendant could have submitted a bystander's report or an agreed statement of facts to support his claim. Nevertheless, even if the

record established 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 constitutional provisions. *People v. Benitez*, 169 Ill. 2d 245, 256, 661 N.E.2d 344, 349-50 (1996). The Illinois constitution specifies that circuit courts "shall have original jurisdiction of all justiciable matters." Ill. Const. 1970, art. VI, § 9. A "justiciable matter" has been defined as "a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Hughes*, 2012 IL 112817, ¶ 20, 983 N.E.2d 439 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335, 770 N.E.2d 177, 184 (2002)).

¶ 23 The indictment in case No. 92-CF-83 charged defendant under the Illinois Revised Statutes with one count of unlawful possession of a weapon by a person in custody of a DOC facility. Ill. Rev. Stat. 1991, ch. 38, ¶ 24-1.1(b). The indictment in case No. 95-CF-186 charged defendant with unlawful possession of a weapon by a person in DOC custody under the Criminal Code of 1961. 720 ILCS 5/24-1.1(b) (West 1994). Thus, both indictments charged defendant with controversies "appropriate for review by the court" and, therefore, the trial court in each case had jurisdiction. See Ill. Const. 1970, art. VI, § 9. We note that defendant's reliance on *People v. Gray*, 261 Ill. 141, 103 N.E.2d 552 (1913), is unpersuasive because *Gray* was decided prior to the effective date of our current constitution.

¶ 24 Because the record does not establish the indictments were invalid, and because defendant has not shown his convictions would be void in the event either grand jury was not sworn or impaneled, we conclude the circuit court did not err by denying plaintiff's section 2-1401 petition.

¶ 25

III. CONCLUSION

¶ 26 For the reasons stated, we affirm the circuit court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 27 Affirmed.