NOTICE
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2013 IL App (4th) 130103-U

NO. 4-13-0103

FILED
December 18, 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.	)	Champaign County
CORINTHIAN HOWARD,	)	No. 02CF1612
Defendant-Appellant.	)	
	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* We grant appointed counsel's motion to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirm the trial court's dismissal of defendant's petition for relief from judgment.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground that no meritorious issues can be raised in this case. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2003, defendant, Corinthian Howard, entered a plea of guilty to first degree murder (720 ILCS 5/9-1(a)(2) (West 2002)) in exchange for an agreed sentence of 20 years' imprisonment. Prior to the prosecutor reading the conditions of the plea agreement into the record, the trial court asked, "Do you understand that the only agreements that make any

difference are the ones that are described out loud right now?" Defendant responded in the affirmative. After the prosecutor read the terms of the plea agreement, which included (1) a sentence of 20 years' imprisonment to the charge of first degree murder (720 ILCS 5/9-1(a)(2) (West 2002)); (2) credit for 197 days' previously served in custody; (3) defendant submitting to a deoxyribonucleic acid (DNA) sample within 45 days; and (4) dismissal of all remaining counts, the following colloquy ensued:

> "THE COURT: Did they describe your plea agreement the way you believe it to be?
>
> DEFENDANT HOWARD: Yeah.
>
> THE COURT: Did anyone promise you anything different from what they just described out loud, in open court, in order to get you to offer to plead guilty?
>
> DEFENDANT HOWARD: No."

¶ 5 The trial court accepted defendant's plea of guilty, finding it to be knowing and voluntary. Defendant filed no motion to withdraw his plea, nor did he seek direct appeal of the proceedings.

¶ 6 In June 2004, defendant filed a *pro se* postconviction petition. The trial court appointed an attorney to represent defendant and, in January 2006, defendant's attorney filed an amended postconviction petition. The amended petition alleged (1) the prosecutor wrongly induced defendant to plead guilty by falsely promising not to give lesser sentences to any co-defendants and (2) defendant's trial attorney provided ineffective assistance of counsel by failing to file a motion to withdraw guilty plea and by providing false information to induce defendant

into entering a plea that was not knowingly or voluntarily made.

¶ 7 In March 2006, the trial court granted the State's motion to dismiss as to the first allegation but denied the motion as to the second allegation. Following an evidentiary hearing, the court denied the second allegation contained in defendant's petition for postconviction relief. This court affirmed the trial court's decision in *People v. Howard*, 377 Ill. App. 3d 1162 (2008) (table) (unpublished order under Supreme Court Rule 23).

¶ 8 On November 9, 2011, defendant 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 2010)) alleging (1) the prosecutor wrongfully induced defendant to enter the plea agreement by falsely promising that the State would not offer lesser sentences to the remaining codefendants; (2) the prosecutor engaged in prosecutorial misconduct by making false representations, thus rendering the sentence void; (3) defendant's attorney provided ineffective assistance of counsel by inducing defendant into accepting a plea agreement that defendant did not understand or wish to accept; and (4) defendant's guilty plea was not knowingly made due to defendant's youth and learning disability. Defendant's prayer for relief requested the trial court (1) reduce defendant's sentence to 15 years' imprisonment for the offense of attempted first degree murder, consistent with the plea accepted by a codefendant; (2) order the State to extend a better offer; and (3) vacate defendant's guilty plea and schedule the case for trial.

¶ 9 On November 30, 2011, the State filed a motion to dismiss, asserting (1) defendant failed to state a meritorious claim; (2) defendant failed to exercise due diligence in bringing his claims; and (3) the claims were barred by *res judicata*. In January 2012, the trial court granted the State's motion to dismiss and sent notice of an adverse judgment to defendant.

¶ 10 Defendant filed a late notice of appeal in February 2013 and the trial court appointed OSAD to represent defendant. The supreme court, exercising its supervisory authority, ordered this court to accept defendant's late notice of appeal and address the merits of defendant's appeal.

¶ 11 In July 2013, OSAD filed a motion to withdraw as counsel on appeal, attaching to its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). On its own motion, this court granted defendant leave to file additional points and authorities. Defendant has not done so. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 12 II. ANALYSIS

¶ 13 OSAD concludes no colorable argument can be made to support defendant's contention that he is entitled to relief under section 2-1401 of the Civil Code. We agree.

¶ 14 A. Standard of Review

¶ 15 The purpose of a petition for relief from judgment pursuant to section 2-1401 of the Civil Code (735 ILCS 5/2-1401 (West 2010)) "is to bring before the trial court facts not appearing in the record that, if known at the time the court entered judgment, would have prevented the judgment's entry." *People v. Bramlett*, 347 Ill. App. 3d 468, 473, 806 N.E.2d 1251, 1255 (2004). Though a petition under section 2-1401 provides a civil remedy, it applies to criminal cases as well. *People v. Vincent*, 226 Ill. 2d 1, 8, 871 N.E.2d 17, 23 (2007).

¶ 16 To successfully plead a petition for relief, the defendant must show (1) a meritorious claim or defense, (2) due diligence in presenting the claim in the original action, and (3) due diligence in filing the section 2-1401 petition. *People v. Lee*, 2012 IL App (4th) 110403,

¶ 15, 979 N.E.2d 992 (citing *Bramlett*, 347 Ill. App. 3d at 473, 806 N.E.2d at 1255). A section 2-1401 petition is subject to dismissal when the petition (1) fails to state a cause of action or (2) fails, on its face, to demonstrate the defendant is entitled to relief. *Vincent*, 226 Ill. 2d at 8, 871 N.E.2d at 23. The trial court's dismissal of a petition for relief under section 2-1401 of the Civil Code is subject to *de novo* review. *Vincent*, 226 Ill. 2d at 13, 871 N.E.2d at 25-26.

¶ 17 B. OSAD's Motion To Withdraw

¶ 18 In its motion to withdraw, OSAD outlines the following potential issues for review: (1) whether the petition set forth a meritorious claim that defendant was wrongfully induced to plead guilty; (2) whether the petition set forth a meritorious claim that defendant's plea was not knowingly and voluntarily made; (3) whether the trial court followed the appropriate procedural rules in dismissing the petition; and (4) whether the underlying conviction and sentence were void. We address these claims in turn.

¶ 19 1. *Whether the Petition Set Forth A Meritorious Claim That the Prosecutor Wrongfully Induced Defendant To Plead Guilty*

¶ 20 OSAD asserts it can make no colorable argument that defendant's petition set forth a meritorious claim that defendant was wrongfully induced to plead guilty based on false representations from the prosecutor. This claim also encompasses defendant's ineffective assistance of counsel and prosecutorial misconduct claims. OSAD contends this issue is barred by *res judicata*. We agree.

¶ 21 A section 2-1401 petition cannot be used to relitigate matters that were previously adjudicated. *Hirsch v. Optima, Inc.*, 397 Ill. App. 3d 102, 110, 920 N.E.2d 547, 556 (2009). Any issue previously resolved by the reviewing court is barred by *res judicata*. *People v. Lacy*,

407 Ill. App. 3d 442, 460, 943 N.E.2d 303, 320 (2011). *Res judicata* also applies to claims that could have been brought in the prior proceedings. *Lacy*, 407 Ill. App. 3d at 460, 943 N.E.2d at 320.

¶ 22 During the postconviction proceedings, the trial court dismissed defendant's claim that the prosecutor wrongfully induced him to enter a plea of guilty by falsely promising other codefendants would not receive more lenient sentences. We affirmed the trial court's decision in *Howard*, 377 Ill. App. 3d 1162 (table) (unpublished order under Supreme Court Rule 23). Thus, defendant's claim that he was wrongfully induced to plead guilty by the prosecutor and defendant's related claim of prosecutorial misconduct are barred by *res judicata*. Additionally, defendant's claim of ineffective of assistance of counsel as it relates to counsel wrongfully inducing defendant to plead guilty and failing to file a motion to withdraw guilty plea are issues that could have been raised within the postconviction proceedings alongside his claims against the prosecutor; hence, defendant's ineffective assistance of counsel claims are also barred by *res judicata*.

¶ 23 We therefore agree with OSAD that no colorable argument can be made that the prosecutor wrongfully induced defendant to plead guilty or that defendant received ineffective assistance of counsel.

¶ 24 2. *Whether the Petition Sets Forth A Meritorious Claim That Defendant's Youth and Learning Disability Precluded a Knowing and Voluntary Plea*

¶ 25 OSAD also reviewed defendant's assertion that he is entitled to relief because his youth and learning disability prevented him from knowingly entering the plea agreement. We note defendant attached no documentation to his petition in support of his assertion. A review of

the record clearly demonstrates defendant received the appropriate admonishments preceding his plea of guilty and the trial court gave defendant ample opportunities to ask for clarification. At that time, defendant declined to ask any questions or indicate a lack of understanding. Moreover, a section 2-1401 petition allows for relief from judgment in criminal cases in order to "correct all errors of fact occurring in the prosecution of a cause, *unknown to the petitioner* and court at the time judgment was entered, which, if then known, would have prevented its rendition." (Emphasis added.) *People v. Haynes*, 192 Ill. 2d 437, 461, 737 N.E.2d 169, 182 (2000). A party filing for relief from judgment more than two years after the adverse judgment bears the burden of demonstrating due diligence in presenting the claim for review. 735 ILCS 5/2-1401(c) (West 2010); *Lee*, 2012 IL App (4th) 110403, ¶ 15, 979 N.E.2d 992. Diligence is determined by the reasonableness of the party's conduct in bringing the issue before the court. *Hirsch*, 397 Ill. App. 3d at 113, 920 N.E.2d at 558. Defendant's youth and alleged learning disability would have been known to defendant at the time of the plea agreement; therefore, defendant's eight-year delay in bringing this issue before the court is unreasonable and demonstrates defendant did not exercise due diligence in seeking relief under section 2-1401 of the Civil Code.

¶ 26 Thus, we conclude OSAD can make no colorable argument that defendant was entitled to relief on his claim that his plea was not knowingly or voluntarily made due to his youth and learning disability.

¶ 27 3. *Whether the Trial Court Followed Procedural Rules in Dismissing Defendant's Petition*

¶ 28 OSAD next asserts it can make no colorable claim that the trial court failed to follow proper procedure in dismissing defendant's section 2-1401 petition. We agree.

¶ 29 Pursuant to Illinois Supreme Court Rule 101(d) (eff. May 30, 2008), which governs section 2-1401 of the Civil Code, once a party files a petition for relief, the opposing party has 30 days to answer the petition or otherwise plead. See also *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009). After 30 days, the petition is ripe for adjudication. *Laugharn*, 233 Ill. 2d at 323, 909 N.E.2d at 805. In this case, defendant filed his petition on November 9, 2011, and the State filed its motion to dismiss within 30 days, on November 30, 2011. The trial court filed an order of dismissal in January 2012, well after 30 days had elapsed. Once the petition became ripe for adjudication, the court exercised its authority to dismiss the case on the grounds the petition failed, on its face, to state a claim upon which relief could be granted or failed to state a cause of action. *Vincent*, 226 Ill. 2d at 8, 871 N.E.2d at 23.

¶ 30 Thus, we conclude OSAD can assert no colorable claim the trial court proceedings contained a procedural defect that entitled defendant to relief.

¶ 31 4. *Whether Defendant's Conviction or Sentence Are Void*

¶ 32 Finally, OSAD argues it can make no colorable claim that the underlying conviction or sentence are void. "An order is void where the court that entered the judgment lacked (1) jurisdiction of the (a) parties or (b) subject matter or (2) the inherent power to make or enter the order." *People v. Wuebbels*, 396 Ill. App. 3d 763, 766, 919 N.E.2d 1122, 1125 (2009).

¶ 33 Defendant personally appeared in court when the State charged defendant with first degree murder arising out of Champaign County, which granted the trial court jurisdiction over both defendant and the subject matter. Moreover, defendant received a sentence within the statutory sentencing guidelines for first degree murder when the court imposed a sentence of 20 years' imprisonment. See 730 ILCS 5/5-4.5-20(a) (West 2012) (formerly 730 ILCS 5/5-8-

1(a)(1)(a) (West 2002) (the statutory sentencing range for first degree murder is a determinate sentence between 20 and 60 years' imprisonment).

¶ 34 Therefore, we conclude OSAD could make no colorable claim that defendant was entitled to relief based on a void sentence.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 37 Affirmed.