



¶ 3 On February 13, 2007, the defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006)). The circuit court summarily dismissed the petition, finding that it was a successive petition for postconviction relief pursuant to the Act (725 ILCS 5/122-1 to 122-8 (West 2006)). This court affirmed in another unpublished decision, *People v. Thomas*, No. 5-07-0486 (2010) (unpublished decision pursuant to Illinois Supreme Court Rule 23).

¶ 4 On December 3, 2010, the defendant filed the instant *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). The defendant also filed a motion for a substitution of judge. In the motion for substitution of judge, the defendant alleged that his previous section 2-1401 petition, filed on February 13, 2007, included a request for a substitution of Judge Terry H. Gamber. The defendant alleged that Judge Gamber improperly dismissed his previous section 2-1401 petition prior to a ruling on his previous request for a substitution of judge and that these facts demonstrate Judge Gamber's bias and prejudice against the defendant.

¶ 5 On February 23, 2011, Judge Mark R. Stanley denied the defendant's motion for substitution of judge.

¶ 6 On June 13, 2011, Judge Gamber entered an order dismissing the defendant's section 2-1401 petition for failure to state a proper cause of action. In his order, Judge Gamber noted that the defendant's petition merely argues why the circuit court incorrectly dismissed his first section 2-1401 petition. However, the court noted, the defendant had appealed the dismissal of the first section 2-1401 petition, and the dismissal was affirmed on appeal. The defendant now appeals the circuit court's denial of his motion for substitution of judge and the dismissal of his December 3, 2010, section 2-1401 petition. We affirm.

¶ 7 Judge Stanley heard the defendant's motion to substitute Judge Gamber and noted that the defendant's argument was based on the fact that Judge Gamber had ruled against him on

numerous occasions, but the defendant had failed to show specific instances of bias, hostility, or ill-will on the part of Judge Gamber toward the defendant. In denying the defendant's motion to reconsider his ruling, Judge Stanley again noted that the defendant failed to meet his burden of showing that Judge Gamber harbored actual prejudice, amounting to animosity, hostility, ill-will, or distrust against the defendant.

¶ 8 Judge Stanley ruled correctly in denying the defendant's motion to substitute Judge Gamber with respect to a hearing on the defendant's December 3, 2010, section 2-1401 petition. A petition for substitution of judge must allege grounds that, if true, would justify granting substitution for cause. *In re Estate of Wilson*, 238 Ill. 2d 519, 554, 939 N.E.2d 426, 447 (2010). "A judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality." *Id.*

¶ 9 In the present case, the allegations contained in the defendant's motion to substitute Judge Gamber with respect to the December 3, 2010, petition are based on his prior rulings against the defendant. The allegations include that Judge Gamber signed a "fraudulent search warrant," allowed the State to amend the indictment, and improperly ruled on the defendant's first section 2-1401 petition. The defendant's allegations do not present a valid basis for a recusal or a substitution. The judge's adverse rulings do not establish any animosity, hostility, ill-will, or distrust toward the defendant. In addition, as Judge Stanley noted in denying the motion, the defendant has appealed many of Judge Gamber's rulings, and all of his challenged rulings in this case have been affirmed by this court. We find nothing in the record that suggests that Judge Stanley should have granted the defendant's motion to substitute Judge Gamber.

¶ 10 With respect to the merits of the defendant's December 3, 2010, petition, the circuit court ruled correctly in dismissing it for failure to state a proper cause of action. The defendant's section 2-1401 petition filed on December 3, 2010, alleged that Judge Gamber

incorrectly ruled on the defendant's first section 2-1401 petition that was filed on February 13, 2007, because the petition contained a request for a substitution of judge. The defendant argues that Judge Gamber did not call a hearing on his request for substitution of judge and, therefore, he lacked authority to rule on the petition.

¶ 11 When the defendant filed his first section 2-1401 petition, Judge Gamber recharacterized the section 2-1401 petition as a postconviction petition, found that it was a successive petition for postconviction, and summarily dismissed it. The defendant appealed this ruling and argued, among other issues, that he was entitled to a substitution of judge. This court affirmed the dismissal of the petition in an unpublished decision, holding that the circuit court did not abuse its discretion in recharacterizing the section 2-1401 petition as a postconviction petition and that the circuit court properly dismissed the petition as a successive petition. With respect to the other issues raised by the defendant, including his right to a substitution of judge, this court held as follows: "[W]e find that the additional claims raised by defendant in the petition basically rehash issues previously addressed by both the trial court and this court or bring up matters that have previously been waived. Therefore, we need not address the additional issues raised by defendant." *Thomas*, No. 5-07-0486, order at 4.

¶ 12 In his section 2-1401 petition filed on December 3, 2010, the defendant once again argues that Judge Gamber should not have ruled on his February 13, 2007, petition and that his ruling on the petition is void. We agree with the circuit court that the defendant's December 3, 2010, petition failed to state a proper cause of action.

¶ 13 Section 2-1401 establishes a comprehensive statutory procedure that allows for the vacation of a final judgment older than 30 days. 735 ILCS 5/2-1401 (West 2010). "A section 2-1401 petition filed more than two years after the challenged judgment cannot be considered absent a clear showing that the person seeking relief was under a legal disability

or duress or the grounds for relief were fraudulently concealed." *People v. Pinkonsly*, 207 Ill. 2d 555, 562, 802 N.E.2d 236, 241 (2003).

¶ 14 The circuit court dismissed the defendant's February 13, 2007, petition on August 16, 2007, after the court recharacterized the pleading as a postconviction petition. The defendant filed the current section 2-1401 petition on December 3, 2010, well past section 2-1401's two-year limitation. The defendant has not alleged that he was under a legal disability or duress or that the grounds for relief were fraudulently concealed. Accordingly, the defendant's section 2-1401 petition was untimely.

¶ 15 A defendant can avoid the two-year limitation on the filing of a section 2-1401 petition if he is challenging a void order. *People v. Harvey*, 196 Ill. 2d 444, 447, 753 N.E.2d 293, 295 (2001). Judge Gamber's rulings with respect to the defendant's February 13, 2007, section 2-1401 petition are not void.

¶ 16 The defendant argues that Judge Gamber's rulings with respect to his February 13, 2007, petition are void because the petition included a request for a substitution of judge, but Judge Gamber did not rule on that request before he recharacterized his petition and dismissed it as a second postconviction petition.

¶ 17 The defendant's February 13, 2007, petition requested a substitution of Judge Gamber for many of the same reasons contained in his December 3, 2010, petition, *i.e.*, that Judge Gamber is prejudiced against the defendant as evidenced by his adverse rulings. For the reasons noted above, the allegations contained within the February 13, 2007, petition do not allege grounds for a substitution or recusal of the judge. A defendant has no absolute right to a substitution of judge at a postconviction proceeding. *People v. Hall*, 157 Ill. 2d 324, 331, 626 N.E.2d 131, 133 (1993). On the contrary, "the judge who presided over the criminal trial should hear his postconviction petition unless it is shown that the judge is substantially prejudiced." *People v. Harvey*, 379 Ill. App. 3d 518, 522, 884 N.E.2d 724, 729

(2008). Rarely, if ever, will a judge's prior rulings in the case form the basis for recusal. *Id.* at 523, 884 N.E.2d at 729; *People v. Vance*, 76 Ill. 2d 171, 178, 390 N.E.2d 867, 870 (1979) (prior adverse rulings against a defendant do not disqualify a judge from sitting in subsequent cases in which defendant is a party). Rather, a defendant seeking to obtain a substitution of judge must show something more, such as a showing of animosity, hostility, ill-will, or distrust towards him. *Vance*, 76 Ill. 2d at 181, 390 N.E.2d at 872.

¶ 18 Accordingly, Judge Gamber was not required to submit the defendant's request to be heard before another judge before ruling on the defendant's February 13, 2007, pleading. "[T]he trial judge was in the best position to determine whether he could hear the petition impartially." *People v. Hall*, 157 Ill. 2d 324, 335, 626 N.E.2d 131, 135-36 (1993). Judge Gamber's rulings on the defendant's February 13, 2007, petition have already been affirmed by this court (*People v. Thomas*, No. 5-07-0486 (2010) (unpublished decision pursuant to Illinois Supreme Court Rule 23)) and are not void. *People v. Harvey*, 379 Ill. App. 3d 518, 523, 884 N.E.2d 724, 730 (2008) ("Ultimately, the fact that Judge Morrissey did not rule on the substitution motion had no effect on his authority to rule on the postconviction petition. \*\*\* Judge Morrissey was not required to transfer the substitution motion to another judge for evaluation, nor was he divested of his authority in the case in the meantime."); *People v. Damnitz*, 269 Ill. App. 3d 51, 55, 645 N.E.2d 465, 468-69 (1994) (holding that the trial judge did not err in refusing to transfer to another judge defendant's motion for substitution of judge for cause where defendant failed to establish even a threshold basis for his substitution motion).

¶ 19 The circuit court, therefore, ruled correctly in determining that Judge Gamber's rulings with respect to the defendant's February 13, 2007, petition were not void, and in dismissing the defendant's December 3, 2010, section 2-1401 petition.

¶ 20 Finally, the defendant complains that the circuit court acted improperly when it *sua*

*sponte* dismissed the petition. In support of his argument the defendant cites *People v. Laugharn*, 233 Ill. 2d 318, 323, 909 N.E.2d 802, 805 (2009), in which the supreme court reversed a *sua sponte* dismissal of a section 2-1401 petition where the dismissal occurred prior to the 30-day period for the State to answer or file a responsive pleading. The circuit court's dismissal in that case was not ripe for adjudication because the State had not been afforded time to respond.

¶ 21 In the present case, the defendant filed his section 2-1401 petition on December 3, 2010, and the circuit court's dismissal order was entered on June 13, 2011. The court entered the dismissal order well beyond the 30-day period for filing an answer or responsive pleading. The circuit court's dismissal, therefore, was not premature or otherwise improper.

¶ 22 Accordingly, for the foregoing reasons, we affirm the circuit court's dismissal of the defendant's section 2-1401 petition filed on December 3, 2010.

¶ 23 Affirmed.