



Appellate Defender, we find no error or potential grounds for appeal. Therefore, we now grant the motion of the State Appellate Defender to withdraw as counsel and affirm the judgment of the circuit court of Madison County based upon the following.

¶ 3 The defendant was charged with unlawful delivery of a controlled substance while located within 1,000 feet of a school, pursuant to section 407(b)(2) of the Illinois Controlled Substances Act (720 ILCS 570/407(b)(2) (West 2010)).<sup>1</sup> While unlawful delivery of a controlled substance within 1,000 feet of a school generally carries a sentence of 4 to 15 years (730 ILCS 5/5-4.5-30(a) (West 2010)), with a prior felony within 10 years as an aggravating factor, it carries a sentence of 15 to 30 years. 730 ILCS 5/5-5-3.2(b)(1) (West 2010); 730 ILCS 5/5-4.5-30(a) (West 2010).<sup>2</sup> The defendant entered into a negotiated plea agreement with the State under which he agreed to plead guilty in exchange for a sentence of 20 years' imprisonment and the State not objecting to his request that the court recommend that he be placed in a drug treatment facility. On August 2, 2011, the defendant filed a *pro*

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<sup>1</sup>Section 401 of the Illinois Controlled Substances Act (720 ILCS 570/401 (West 2010)) prohibits, *inter alia*, the delivery of a controlled substance, and subsection (d) provides that such delivery, *inter alia*, in any amount other than that enumerated in the section, is a Class 2 felony; however, section 407(b)(2) makes such delivery a Class 1 felony, if, *inter alia*, it occurs within 1,000 feet of a school.

<sup>2</sup>Class 1 felonies, pursuant to section 5-4.5-30 of the Unified Code of Corrections (730 ILCS 5/5-4.5-30 (West 2010)), are generally subject to a sentence of 4 to 15 years. Section 5-5-3.2(b)(1) of the Illinois Controlled Substances Act (730 ILCS 5/5-5-3.2 (West 2010)) provides that a prior felony conviction within 10 years "may be considered by the court as [a] reason[ ] to impose an extended term sentence." Section 5-4.5-30 (730 ILCS 5/5-4.5-30 (West 2010)) provides that an extended-term Class 1 felony carries a sentence of 15 to 30 years.

*se* motion for reduction of sentence. The court dismissed the defendant's petition. On November 4, 2011, the defendant filed, *pro se*, a petition for postconviction relief and a petition for relief from judgment. In orders dated January 3, 2012, the court dismissed both of the defendant's petitions.

¶ 4

#### ANALYSIS

¶ 5 In his petitions for postconviction relief and relief from judgment, the defendant argued that the 20-year sentence entered against him is void because it exceeded that which was authorized by statute. In its motion to withdraw from representation on appeal, the State Appellate Defender posits that no meritorious argument can be made that the defendant's sentence is void. We agree with the State Appellate Defender.

¶ 6 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2010)) allows an individual convicted of a criminal offense to challenge the proceeding in which he or she was convicted under the United States or Illinois Constitution or both. *People v. Cathey*, 2012 IL 111746, ¶ 17 (citing *People v. Harris*, 224 Ill. 2d 115, 124 (2007)). A petition for relief under the Act may be summarily dismissed by the circuit court if it is "frivolous or is patently without merit." *Id.* (quoting 725 ILCS 5/122-2.1(a)(2) (West 2006)). "A postconviction petition is considered frivolous or patently without merit only if it has no 'arguable basis either in law or in fact.'" *Id.* (quoting *People v. Hodges*, 234 Ill. 2d 1, 16 (2009)). "A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). We review a circuit court's order summarily dismissing a *pro se* postconviction petition *de novo*. *Cathey*, 2012 IL 111746, ¶ 17 (citing *People v. Coleman*, 183 Ill. 2d 366 (1998)).

¶ 7 With regard to the merits, it is well settled that "a sentence, or portion thereof, that is not authorized by statute is void." *People v. Thompson*, 209 Ill. 2d 19, 23 (2004) (citing

*People ex rel. Waller v. McKoski*, 195 Ill. 2d 393, 401 (2001); *People v. Williams*, 179 Ill. 2d 331, 336 (1997); *People v. Arna*, 168 Ill. 2d 107, 113 (1995); *People v. Wade*, 116 Ill. 2d 1, 5-6 (1987); *In re T.E.*, 85 Ill. 2d 326, 333 (1981); *People v. Simmons*, 256 Ill. App. 3d 651, 652 (1993); *People v. Perruquet*, 181 Ill. App. 3d 660, 663 (1989)). "[A] void order may be attacked at any time or in any court, either directly or collaterally." *Id.* at 25 (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135 (1945)); *JoJan Corp. v. Brent*, 307 Ill. App. 3d 496, 502 (1999); *Potenz Corp. v. Petrozzini*, 170 Ill. App. 3d 617, 618 (1988)). "An argument that an order or judgment is void is not subject to waiver." *Id.* at 27.

¶ 8 As the State Appellate Defender points out, the Unified Code of Corrections provides for an extended-term sentence in the case of a previous felony conviction "when such conviction has occurred within 10 years after the previous conviction." 730 ILCS 5/5-5-3.2 (West 2010). When a defendant pleads guilty he must be advised of the possible enhancement due to a previous felony conviction or "the defendant shall not be subject to such a sentence unless he is first given an opportunity to withdraw his plea without prejudice." 730 ILCS 5/5-8-2(b) (West 2010).

¶ 9 The record reveals that the defendant was thoroughly admonished that his sentence was subject to enhancement. His attorney advised the court that the defendant "would enter a plea of guilty" and "be sentenced to the Illinois Department of Corrections for a sentence of 20 years." The court then asked the defendant if that was his "understanding of the negotiations." The defendant responded in the affirmative. The court then advised that the defendant was "also eligible for an extended sentence, which is what the 20 would be because of [his] Aggravated Robbery conviction." Again, the defendant responded in the affirmative. With regard to the court's recommendation that the defendant spend time in a drug evaluation and drug treatment facility, the court advised that it was "just a

recommendation" and that it was "up to the Department of Corrections." The court later advised the defendant as follows:

"If you have a prior Class 1 or greater felony conviction within the last ten years, and you do have, you could receive an extended sentence. That would be a sentence to prison anywhere from 15 to 30 years. Upon release from prison there is a two-year mandatory supervised release period."

The defendant again indicated that he understood. The court again advised the defendant that it would sentence him to the 20 years' imprisonment to which he and the State had agreed, along with 2 years of mandatory supervised release, and asked the defendant that, if "knowing all of that," he still wished to plead guilty. The defendant again responded affirmatively.

¶ 10 In his petition, the defendant also argued ineffective assistance of counsel, but based his argument on the position that the 20-year sentence was in excess of statutory authority. Because the court was clearly authorized to impose a 20-year sentence, any argument claiming ineffective assistance of counsel based on the 20-year sentence being void would be frivolous and patently without merit.

¶ 11 The State Appellate Defender's motion did not specifically address the defendant's petition for relief from judgment. In his notice of appeal, the defendant advised that he was appealing a "January [order] \*\*\* where his Post-Conviction Petition was denied." While the defendant did not specifically mention the dismissal of his section 2-1401 motion (735 ILCS 5/2-1401 (West 2010)), it was presented simultaneously with his postconviction petition, and the court dismissed both petitions, albeit in separate orders, on the same day. We note that a circuit court may "dispose of a matter when it is clear on its face that the requesting party is not entitled to relief as a matter of law." *People v. Vincent*, 226 Ill. 2d 1, 12 (2007) (citing *Mitchell v. Norman James Construction Co.*, 291 Ill. App. 3d 927 (1997); *Rhodes v. Mill*

*Race Inn, Inc.*, 126 Ill. App. 3d 1024 (1984)). Assuming *arguendo* that the defendant's notice of appeal also encompasses a challenge to the circuit court's dismissal of his section 2-1401 petition for relief from judgment, we conclude that no meritorious argument can be made on the defendant's behalf that the court erred in dismissing the petition, given that it was apparently based on the same argument as the petition for postconviction relief and the court was clearly within its statutory right in imposing a 20-year sentence pursuant to the negotiated plea agreement.

¶ 12

#### CONCLUSION

¶ 13 The motion of the State Appellate Defender to withdraw is granted, and the judgment of the circuit court is affirmed.

¶ 14 Motion granted; judgment affirmed.