

No. 1-12-0796

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
)	Cook County
Respondent-Appellee,)	
)	No. 94 CR 15518
v.)	
)	
CORDELL WILLIAMS,)	Honorable
)	Vincent M. Gaughan,
Petitioner-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Connors and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Appellant's petition pursuant to section 2-1401 of the Code of Civil Procedure seeking vacatur of his life sentence was properly dismissed as untimely, notwithstanding subsequent United States Supreme Court precedent that mandatory life sentences are unconstitutional when applied to juvenile defendants. Statute mandating life sentence was not rendered void by United States Supreme Court decision because it could be validly applied to adult defendants, and thus appellant established no exception to the two-year time limitation to file a section 2-1401 petition for relief from judgment.

¶ 2 Defendant-Appellant Cordell Williams (Williams) appeals from the dismissal of his petition pursuant to section 2-1401 of the Code of Civil Procedure seeking to vacate his 1995

sentence of life in prison without parole following his conviction for participating in a double murder in May 1994. Williams argues that: (1) his sentence, rendered pursuant to a statute mandating natural life in prison for those convicted of murdering multiple victims, was unconstitutional based on the United States Supreme Court's decision in *Miller v. Alabama*, 567 U.S. at ___, 132 S. Ct. 2455 (2012); and (2) that he is entitled to a reduction in his sentence to credit him for time served in custody prior to his sentencing.

¶ 3

BACKGROUND

¶ 4 In May 1994, Williams was 19 years old and a member of a street gang. Shortly after midnight on May 26, 1994, he was driving his car with three other gang members as passengers. One of those passengers, David Evans, told Williams that he saw rival gang members in a restaurant and asked Williams to stop the car. Evans got out of the car, retrieved a gun from the trunk of the car, and proceeded to fatally shoot two people in the restaurant. After the shootings, Evans returned to the car and Williams drove him and the other passengers away from the scene of the crime.

¶ 5 Williams was charged with first degree murder pursuant to Illinois' accountability statute, which provides that "[a] person is legally accountable for the conduct of another when" "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2 (1994). After trial, a jury found Williams guilty of first degree murder.

¶ 6 The applicable sentencing statute at the time mandated that in first degree murder cases, the "court shall sentence the defendant to a term of natural life imprisonment when the death penalty is not imposed" where the defendant "is found guilty of murdering more than one victim

***." 730 ILCS 5/5-8-1(a)(1)(c)(ii) (1994). Accordingly, in August 1995, the trial court sentenced Williams to natural life in prison without the possibility of parole.

¶ 7 Williams engaged in extensive post-conviction litigation. First, Williams directly appealed his conviction, asserting error in the trial court's jury instructions. We affirmed the conviction and sentence on March 26, 1999. Williams filed his first post-conviction petition in March 2000, alleging ineffective assistance of appellate counsel. After that petition was denied by the trial court, Williams argued on appeal that Public Act 83-942, which amended the Post-Conviction Hearing Act, violated the Illinois Constitution. We disagreed and affirmed denial of his first post-conviction petition on September 6, 2002. Two weeks later, Williams filed a second post-conviction petition claiming actual innocence on the basis of new evidence. The trial court dismissed that petition on September 30, 2002, and we affirmed in September 2004.

¶ 8 Williams filed a petition for writ of *habeas corpus* in April 2008, alleging, among other claims, that his due process rights were violated because he did not have an opportunity to respond to the prosecution's argument on accountability and that his sentence was unconstitutional. The trial court dismissed the *habeas corpus* petition in June 2008. We affirmed on December 15, 2009, finding no issues of arguable merit.

¶ 9 On October 18, 2011, Williams filed a *pro se* "Motion to Vacate Void Judgment" (the Petition) pursuant to Section 2-1401 of the Code of Civil Procedure that is the subject of this appeal. The Petition alleges numerous constitutional violations, including with respect to the indictment's failure to include the theory of accountability, instructions to the jury on the accountability statute, and the validity of the life sentence. The Petition requests a reduced sentence or new trial.

¶ 10 The trial court dismissed the Petition on January 27, 2012 as untimely, as it was filed well beyond the two-year limitations period prescribed by section 2-1401. The trial court noted that Williams had not claimed legal duress or fraudulent concealment that would toll the limitations period. The court then rejected Williams' argument that the two-year limit did not apply because the original judgment was void. The trial court further held that Williams' petition was also barred by the doctrine of *res judicata*, as "petitioner [had] previously and unsuccessfully challenged the trial court's imposition of a natural life sentence, as well as the indictment" in his 2008 *habeas corpus* petition.

¶ 11 Following the trial court's dismissal of the Petition, the United States Supreme Court decided *Miller v. Alabama*, which held that a sentence of "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" 567 U.S. at ___, 132 S. Ct 2455, 2460 (2012). On appeal, Williams' chief argument is that, in light of *Miller*, the Illinois statute mandating a life sentence for those convicted of multiple murders was unconstitutional as applied to him. Although acknowledging that he was over 18 at the time of the murders, Williams contends that he is entitled to a new sentencing hearing at which the trial court may consider mitigating factors such as his relatively young age at the time of the crime, his limited degree of participation in the murders, and his lack of prior convictions. Williams also argues that at re-sentencing he should receive a credit for his time spent in pre-sentence custody. The State argues that, notwithstanding *Miller*, Williams' sentence was not void and the Petition was untimely. The State also contends the Petition is barred by *res judicata* and that Williams cannot rely on *Miller* for the first time on appeal.

¶ 12

ANALYSIS

¶ 13 Section 2-1401 of the Code of Civil Procedure "establishes a comprehensive statutory procedure allowing for vacatur of a final judgment older than 30 days." *People v. Gray*, 2013 IL App (1st) 112572, ¶ 7; 735 ILCS 5/2-1401 (West 2010). In most cases, "the petition must be filed not later than 2 years after the entry of the order or judgment," although this time limit can be tolled due to legal disability, duress, or fraudulent concealment of the ground for relief. 735 ILCS 5/2-1401(c) (West 2010). Generally, "[a] section 2-1401 petition filed more than two years after the challenged judgment cannot be considered absent a clear showing" of such an exception. *People v. Pinkonsly*, 207 Ill. 2d 555, 562 (2003).

¶ 14 However, section 2-1401(f) also provides that "[n]othing contained in this Section affects any existing right to relief from a void order or judgment ***." 735 ILCS 5/2-1401(f). Accordingly, our courts have held that "[p]etitions brought on voidness grounds need not be brought within the two-year time limitation." *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002); *Gray*, 2013 IL App (1st) 112572, ¶ 7 ("The two-year limitation *** does not apply to petitions brought on voidness grounds."); *People v. Morfin*, 2012 IL App (1st) 103568, ¶ 30 ("A petition challenging a judgment as void is not subject to the limitations period ***.").

¶ 15 As the Petition was dismissed as untimely despite Williams' claim that his sentence was void, we will review the dismissal *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007) ("when a court enters either a judgment on the pleadings or a dismissal in a section 2-1401 proceeding, that order will be reviewed, on appeal, *de novo*."); *Morfin*, 2012 IL App (1st) 103568, ¶ 30 ("this court reviews *de novo* the disposition of a section 2-1401 petition other than after an evidentiary hearing.").

¶ 16 As there is no dispute that the Petition was filed more than two years after Williams' sentence, its timeliness turns on whether the voidness exception applies due to the United States Supreme Court's decision in *Miller*. We note that we faced virtually the same issue in *People v. Gray*, 2013 IL App (1st) 112572. We conclude that our reasoning in that decision applies, especially as the Illinois Supreme Court recently decided *Miller's* impact on the sentencing statute.

¶ 17 In *Gray*, a juvenile defendant was found guilty of first degree murder through accountability; since he had a prior murder conviction, by statute he received a mandatory life sentence. 2013 IL App (1st) 112572, ¶ 3; 730 ILCS 5/5-8-1(a)(1)(c)(i). The *Gray* defendant filed a section 2-1401 petition several years after his sentencing, arguing that the two-year limitation period should not apply to his petition because *Miller* had rendered his mandatory life sentence void. *Id.* ¶ 8. The *Gray* defendant relied on the principle that "a sentence which *** violates the constitution is void from its inception and may be challenged at any time." *Id.*

¶ 18 Addressing the voidness issue, we differentiated between a facially unconstitutional sentencing statute and one that could be either constitutionally or unconstitutionally applied. We explained that "[a] statute that is unconstitutional on its face—that is, where no set of circumstances exists under which it would be valid—is void *ab initio*, while a statute that is merely unconstitutional as applied is not." ¶ 10. In other words, we stated the principle "that which is unconstitutional is not necessarily void." *Id.* We held that the sentencing statute was not void, notwithstanding *Miller's* prohibition of mandatory life sentences for minors, since it could be constitutionally applied to adult defendants. Because "*Miller v. Alabama* does not affect the validity of the natural life imprisonment statute as to nonminor defendants," we concluded "the statute is not unconstitutional on its face." *Id.* ¶ 11. Thus the defendant's

sentence was not void, but was "merely voidable if challenged in a timely manner." *Id.* ¶ 11. However, the *Gray* defendant's section 2-1401 petition was not filed within two years of the challenged sentence and so we affirmed dismissal. *Id.* ¶ 12 ("Because we have concluded that defendant's sentence is not void and because defendant did not file his section 2-1401 petition within the two-year statutory limitation, we cannot grant defendant the relief he seeks.").

¶ 19 In this appeal, the State argues that our reasoning in *Gray* controls and that Williams' Petition is likewise untimely. Williams responds that we should follow the different result reached in *People v. Luciano*, where our Second District held that a postconviction petition asserting voidness under *Miller* raised "a proper voidness challenge" since "a sentence that contravenes the Constitution may be challenged at any time." 2013 IL App (2d) 110792, ¶ 48. Williams contends that we should follow *Luciano* rather than *Gray* in light of Illinois Supreme Court precedent that an unconstitutional sentence or statute can be challenged at any time. *See People v. Brown*, 225 Ill. 2d 188, 203 (2007) (sentence that violates constitution is void from inception and subject to challenge at any time); *People v. McCarty*, 223 Ill. 2d 109, 123 (2006) (challenge to constitutionality of a statute can be raised at any time); *People v. Guevara*, 216 Ill. 2d 533, 542 (2005) (defendant may argue a criminal statute was unconstitutional and void *ab initio* at any time).

¶ 20 Any ambiguity in the case law has been resolved, however, as the Illinois Supreme Court recently decided the precise issue of whether *Miller* rendered the mandatory life sentence provision of 730 ILCS 5/5-8-1(a)(1)(c) void. *People v. Davis*, 2014 IL 115595 (2014). Under the *Davis* decision, which was issued since the parties' arguments on appeal, we are compelled to agree with the State that Williams' sentence was not void and thus his Petition is untimely.

¶ 21 The defendant in *Davis*, like Williams here, was subject to a mandatory life sentence pursuant to 730 ILCS 5/5-8-1(a)(1)(c) after being found guilty of murdering more than one victim. *Id.* ¶ 5. That defendant, who was 14 at the time of the murders, brought a petition under the Post-Conviction Hearing Act and argued that the *Miller* decision "render[ed] the statutory scheme under which he was sentenced void." *Id.* ¶ 23. The *Davis* defendant argued that mandatory life imprisonment was "facially unconstitutional because under no circumstances does the statute permit a sentencer 'to consider age and its relevant mitigating factors in compliance with *Miller*.'" *Id.* ¶ 28.

¶ 22 Our supreme court's analysis recognized that "[i]f a new constitutional rule renders a statute facially unconstitutional, the statute is void *ab initio*." *Id.* ¶ 25. Moreover, the *Davis* court reaffirmed that "a sentence that violates the constitution is void from its inception and may be attacked at any time and in any court, either directly or collaterally." *Id.* ¶ 26 (citations omitted). However, the court held that "[a] statute is facially unconstitutional only if there are no circumstances in which the statute could be validly applied." *Id.* ¶ 25. The *Davis* court explained that even if "the statute could be found unconstitutional under some set of circumstances" this "does not establish the facial invalidity of the statute." *Id.* Rather, "a facial challenge must fail if any situation exists where the statute could be validly applied." *Id.*

¶ 23 Examining 730 ILCS 5/5-8-1(a)(1)(c) in conjunction with *Miller*, our supreme court recognized that "*Miller* itself expressly limited its prohibition of mandatory sentences of life without parole to juveniles." *Id.* ¶ 29. Thus, even after *Miller*, "a sentencing rule that may be impermissible for children may be permissible for adults." *Id.* (citing *Miller*, 132 S. Ct. at 2470). Applying this logic to the statute at issue, the Illinois Supreme Court reasoned: "the mandatory sentence of life without parole for defendants who commit multiple murders, as provided in

section 5-8-1(a)(1)(c), can be validly applied to adults. Because there are situations where the statute can be validly applied, it is not facially unconstitutional." *Id.* ¶ 30.

¶ 24 The *Davis* court went on to hold that the defendant was nevertheless entitled to a new sentencing hearing since *Miller* applied retroactively to juvenile defendants sentenced to a mandatory term of life without parole. *Id.* ¶¶ 34-43. As the *Davis* defendant had been a juvenile offender, his mandatory life sentence was invalid. *Id.* ¶ 43. However, the *Davis* court emphasized that "*Miller* does not invalidate the penalty of natural life without parole for multiple murderers, only its *mandatory* imposition on juveniles." *Id.* ¶ 43. Here, as there is no dispute that Williams was 19 at the time of his offense, *Davis* does not entitle him to a new sentencing hearing.

¶ 25 In short, the Illinois Supreme Court in *Davis* concluded that the very sentencing statute at issue in this appeal was not facially unconstitutional even after the United States Supreme Court's *Miller* decision. As *Davis* confirmed that section 5-8-1(a)(1)(c) can be validly applied to adult defendants, we must reject Williams' argument that his sentence was rendered void by *Miller*. Therefore, Williams' sentence was not void but "merely voidable if challenged in a timely manner." *See Gray*, 2013 IL App (1st) 112572, ¶ 11.

¶ 26 As in *Gray*, William's petition here was not timely. *See id.* ¶ 12. Williams' sentence was not void, and there has been no contention that legal incapacity, duress, or fraudulent concealment tolled the applicable two-year limitation period. As the Petition was filed well over a decade after Williams' sentencing, it is untimely and we affirm the trial court's dismissal of the Petition on that basis.

¶ 27 Although the Petition's untimeliness is alone sufficient to affirm, the trial court correctly held that the Petition was also subject to dismissal on *res judicata* grounds since it raised

constitutional challenges that had been rejected in Williams' petition for *habeas corpus*. "Considerations of waiver and *res judicata* limit the range of issues available to a post-conviction petitioner to constitutional matters that have not been, and could not have been, previously adjudicated." *People v. Miller*, 203 Ill. 2d 433, 437 (2002). "Points previously raised at trial and other collateral proceedings cannot form the basis of a section 2-1401 petition for relief." *People v. Haynes*, 192 Ill. 2d 437, 461 (2000); see also *Davis*, 2014 IL 115595, ¶ 45 (barring arguments that mandatory life sentence violated Illinois Constitution since "these contentions were raised and rejected previously"). The doctrine of *res judicata* thus independently supports the Petition's dismissal.

¶ 28 The fact that Williams' appeal departs from the arguments raised in the original *pro se* Petition and instead raises the *Miller* holding for the first time does not necessarily support dismissal of the Petition because *Miller* had not been decided when Williams filed his original *pro se* Petition. However, Williams used the wrong procedural vehicle to assert constitutional challenges to his sentence. A proper section 2-1401 petition asserts factual errors, not new legal arguments. See *People v. Pinkonsly*, 207 Ill. 2d 555, 565-67 (2003) (explaining that "[a] meritorious defense under section 2-1401 involves errors of fact, not law" and a section 2-1401 petition is "not an appropriate forum for ineffective-assistance [of counsel] claims because such claims do not challenge the factual basis for the judgment"); *People v. Haynes*, 192 Ill. 2d 437, 461 (2000) ("A section 2-1401 petition for relief from a final judgment is the forum in a criminal case in which to correct all errors of fact occurring in the prosecution of a cause *** which, if then known, would have prevented its rendition."). The appropriate method for collaterally attacking a sentence on constitutional grounds is a Post-Conviction Hearing Act petition pursuant to 725 ILCS 5/122-1. See *Pinkonsly*, 207 Ill. 2d at 566 (explaining that "[a] post-conviction

petition requires the court to decide whether defendant's constitutional rights were violated at trial" whereas "a section 2-1401 petition *** requires the court to determine whether facts exist that *** would have prevented entry of the judgment."); *Gray*, 2013 IL App (1st) 112572, ¶ 13 (noting that although section 2-1401 petition was untimely, defendant "may raise the present sentencing issue before the circuit court through the Post-Conviction Hearing Act *** which permits a defendant to challenge his conviction based on a deprivation of constitutional rights.").

¶ 29 As we have concluded that the Petition which gave rise to the instant appeal was not only the wrong procedural vehicle but was also untimely, we do not address the merits of Williams' arguments that a mandatory natural-life sentence was unconstitutional as applied to a 19-year-old defendant under his particular circumstances, or his argument that he is entitled to credit for time spent in custody prior to his sentencing.

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.