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2014 IL App (3d) 130300-U

Order filed May 13, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 21st Judicial Circuit,
)	Kankakee County, Illinois,
Plaintiff-Appellee,)	
)	Appeal Nos. 3-13-0300 and 3-13-0301
v.)	Circuit Nos. 85-CF-1 and 85-CF-264
)	
JAMES L. TREECE,)	Honorable
)	Kathy Bradshaw-Elliott,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly *sua sponte* dismissed both defendant's motion to vacate and his section 2-1401 petition.
- ¶ 2 Following a jury trial in 1985, defendant, James L. Treece, was convicted of murder (Ill. Rev. Stat. 1983, ch. 38, ¶ 9-1(a)(1), (3)), armed robbery (Ill. Rev. Stat. 1983, ch. 38, ¶ 18-2(a)), aggravated criminal sexual assault (Ill. Rev. Stat., 1984 Supp., ch. 38, ¶ 12-14(a)(1), (2)), aggravated kidnapping (Ill. Rev. Stat. 1983, ch. 38, ¶ 10-2(a)(3), (5)), and home invasion (Ill. Rev. Stat. 1983, ch. 38, ¶ 12-11(a)). He was sentenced to natural life imprisonment for murder,

concurrent terms of 60 years' imprisonment for armed robbery, aggravated criminal sexual assault and home invasion, and a concurrent term of 30 years' imprisonment for aggravated kidnapping. On direct appeal, defendant's convictions and natural life sentence for murder were upheld, and the sentences on his remaining convictions were reduced. *People v. Treece*, 159 Ill. App. 3d 397 (1987). Defendant subsequently filed numerous pleadings attacking his convictions and sentences, all of which were unsuccessful. In 2012, defendant filed a *pro se* motion to vacate and a petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)), which were both dismissed *sua sponte* by the trial court. Defendant appeals, arguing that the trial court erred by dismissing his *pro se* pleadings and his motions to reconsider those pleadings because: (1) his conviction for aggravated criminal sexual assault is void; (2) several of his convictions are void because they violate the one-act, one-crime doctrine; and (3) his natural life sentence is void because it was based on the trial court's erroneous finding that he was eligible for the death penalty. We affirm.

¶ 3

FACTS

¶ 4

In January 1985, defendant and his codefendant, William Braid, were charged by indictment with eight counts of murder (Ill. Rev. Stat. 1983, ch. 38, ¶ 9-1(a)(1), (3)), one count of armed robbery (Ill. Rev. Stat. 1983, ch. 38, ¶ 18-2(a)), two counts of aggravated criminal sexual assault (Ill. Rev. Stat., 1984 Supp., ch. 38, ¶ 12-14(a)(1), (2)), two counts of aggravated kidnapping (Ill. Rev. Stat. 1983, ch. 38, ¶ 10-2(a)(3), (5)), one count of home invasion (Ill. Rev. Stat. 1983, ch. 38, ¶ 12-11(a)), and two counts of conspiracy (Ill. Rev. Stat. 1983, ch. 38, ¶ 8-2). The charges related to the abduction and shooting death of 15-year-old Jessica Hosick on December 26, 1984. Defendant's case was severed from Braid's case and proceeded to a jury trial. Braid provided the main testimonial evidence against defendant. In May 1985, the jury

returned general verdicts of guilty on all charges. Defendant's conspiracy conviction was subsequently vacated.

¶ 5 Defendant waived his right to have a jury determine whether the death penalty should be imposed. Following a sentencing hearing, the trial court found that defendant was 18 years old at the time of the offense, the victim was killed in the course of another felony, and the victim was actually killed by defendant. As such, the court found defendant eligible for the death penalty. See Ill. Rev. Stat. 1983, ch. 38, ¶ 9-1(b)(6)(a)(i). After considering the factors in aggravation and mitigation, the court found sufficient mitigation to preclude imposition of the death penalty, namely that defendant had no significant history of prior criminal activity. See Ill. Rev. Stat. 1983, ch. 38, ¶ 9-1(c). Instead, the court sentenced defendant to a term of natural life imprisonment based on its finding that the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. See Ill. Rev. Stat. 1983, ch. 38, ¶ 1005-8-1(a)(1)(b). Defendant was also sentenced to concurrent terms of 60 years' imprisonment for armed robbery, aggravated criminal sexual assault and home invasion, and a concurrent term of 30 years' imprisonment for aggravated kidnapping.

¶ 6 On direct appeal, defendant's convictions and natural life sentence for murder were affirmed. *Treece*, 159 Ill. App. 3d 397. However, defendant's sentences for armed robbery, aggravated criminal sexual assault, and home invasion were reduced to 30 years' imprisonment, and his sentence for aggravated kidnapping was reduced to 15 years' imprisonment. *Id.*

¶ 7 In 1998, defendant filed a motion to allow deoxyribonucleic acid (DNA) testing, claiming the test results would establish his actual innocence. The trial court denied defendant's motion. Defendant then filed a motion to reconsider DNA testing, which the court also denied.

¶ 8 On November 19, 2012, defendant filed a *pro se* motion to vacate his aggravated criminal sexual assault conviction and sentence as void, claiming there was insufficient evidence to prove

he committed the offense. Defendant specifically relied on the trial court's written order denying his 1998 motion to reconsider DNA testing where the court, in reciting the facts of the trial, noted that Braid admitted to sexually attacking the victim, but that there was no testimony that defendant physically participated in the sexual attack. The trial court *sua sponte* dismissed defendant's motion to vacate on February 26, 2013.

¶ 9 On December 3, 2012, defendant filed a *pro se* section 2-1401 petition, arguing that his: (1) murder conviction was void because it violated the one-act, one-crime doctrine; and (2) natural life sentence was void where he was improperly found to be eligible for the death penalty. The trial court *sua sponte* dismissed the petition on March 5, 2013. Defendant filed motions to reconsider the dismissal of his motion to vacate and section 2-1401 petition, both of which were denied by the trial court. Defendant appeals.

¶ 10 ANALYSIS

¶ 11 Defendant argues that the trial court erred in *sua sponte* dismissing both of his *pro se* pleadings and his motions to reconsider those pleadings. Initially, we note that defendant did not bring his motion to vacate pursuant to section 2-1401 of the Code of Civil Procedure. Nevertheless, since defendant's motion sought to vacate a judgment more than 30 days old, we will treat defendant's motion to vacate as a section 2-1401 petition. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95 (2002).

¶ 12 Section 2-1401 establishes a comprehensive statutory procedure that allows for vacatur of a final judgment older than 30 days. 735 ILCS 5/2-1401 (West 2012). Relief under section 2-1401 is predicated upon proof, by a preponderance of the evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in discovering the defense or claim and presenting the petition. *People v. Vincent*, 226 Ill. 2d 1 (2007). The statute requires petitions to be filed within two years of the judgment's entry. 735 ILCS 5/2-

1401(c) (West 2012). However, a defendant may seek relief beyond the two-year limitations period where the judgment being challenged is void. *Sarkissian*, 201 Ill. 2d 95. We review the dismissal of a section 2-1401 petition *de novo*. *Vincent*, 226 Ill. 2d 1.

¶ 13 Here, defendant was convicted in 1985. Defendant did not file the instant pleadings until 2012, well beyond the two-year limitations period. See 735 ILCS 5/2-1401(c) (West 2012). Defendant, however, brings his petitions on voidness grounds. A judgment is void only if the court that entered it lacked jurisdiction. *People v. Davis*, 156 Ill. 2d 149 (1993). The jurisdictional failure can be the court's lack of: (1) personal jurisdiction; (2) subject matter jurisdiction; or (3) power to render the particular judgment or sentence. *Id.* For the reasons we will discuss below, defendant's allegations do not establish any void judgment, and thus, defendant is not entitled to relief.

¶ 14 I. Aggravated Criminal Sexual Assault Conviction

¶ 15 Defendant first argues that his aggravated criminal sexual assault conviction is void because he was not proven guilty beyond a reasonable doubt.

¶ 16 Although defendant claims that his conviction is void, he does not assert that the trial court was without jurisdiction to enter the judgment. See *Davis*, 156 Ill. 2d 149. Instead, defendant solely challenges the sufficiency of the evidence that was presented at trial. A section 2-1401 petition provides a forum in which to correct all errors of fact occurring in the prosecution of a cause, unknown to defendant and the court at the time the judgment was entered, which, if then known, would have prevented the judgment. *People v. Haynes*, 192 Ill. 2d 437 (2000). It is not, however, designed to provide a general review of all trial errors, nor substitute for a direct appeal. *Id.*

¶ 17 Here, defendant does not assert new or additional evidence that would have prevented his conviction, but rather relies heavily on the trial court's written order denying his 1998 motion to

reconsider DNA testing. Even if defendant could successfully argue that he was not proven guilty beyond a reasonable doubt, it would not render his conviction void because the court had jurisdiction over defendant and the subject matter, and it had the authority to enter conviction and sentence on the offense. See *Davis*, 156 Ill. 2d 149. Additionally, since defendant challenges the sufficiency of the evidence presented at trial, he has forfeited this issue by failing to raise it on direct appeal. See *People v. Morfin*, 2012 IL App (1st) 103568 (finding that claims that could have been raised on direct appeal, but were not, are deemed forfeited). Therefore, we find defendant's argument inappropriate for section 2-1401 relief. See *People v. Burrows*, 172 Ill. 2d 169 (1996) (stating that the purpose of postjudgment review is to resolve arguments that new or additional matters, if they had been known at the time of trial, could have prevented a finding that defendant was guilty of the crimes charged).

¶ 18 II. Murder Conviction

¶ 19 Defendant next argues that his convictions are void because they violate the one-act, one-crime doctrine. Specifically, defendant argues that because he was convicted of felony murder, he cannot also be convicted of the underlying felony offense.

¶ 20 Defendant was charged by indictment with two counts of intentional murder (Ill. Rev. Stat. 1983, ch. 38, ¶ 9-1(a)(1)) and six counts of felony murder (Ill. Rev. Stat. 1983, ch. 38, ¶ 9-1(a)(3)). The predicate forcible felonies included aggravated criminal sexual assault, aggravated kidnapping, home invasion, and armed robbery. The trial court submitted to the jury general verdict forms, and defendant did not object or request separate verdict forms for each type of murder. Thus, the jury returned general verdicts of guilty on each of the eight counts of first degree murder and also found defendant guilty of the underlying felony offenses.

¶ 21 Based on our review of the record, we disagree with defendant that he was convicted of felony murder. When a defendant is charged with both intentional and felony murder, and the

jury returns a general verdict of guilty for first degree murder, defendant is found to be guilty as charged in each count and there is a presumption that defendant has been found guilty of the most culpable mental state, which is intentional murder. See *People v. Davis*, 233 Ill. 2d 244 (2009). Furthermore, where defendant does not request special verdict forms for the jury, the court is not required to *sua sponte* tender special verdict forms. Compare *People v. Calhoun*, 404 Ill. App. 3d 362 (2010), with *People v. Smith*, 233 Ill. 2d 1 (2009). Based on the evidence at trial linking defendant to the shooting death of the victim, the trial court had the authority to enter judgment upon the jury's verdicts and convict defendant of intentional murder. As such, defendant was properly convicted of both first degree murder and the predicate felony charges.

¶ 22 Although defendant briefly argues that his trial counsel was ineffective for failing to object to the general verdict form, section 2-1401 proceedings are not an appropriate forum for ineffective assistance of counsel claims. *People v. Pinkonsly*, 207 Ill. 2d 555 (2003). Moreover, even if defendant had been convicted of felony murder, his conviction for the underlying felony would not render his conviction and sentence void. See *People v. Moran*, 2012 IL App (1st) 111165 (finding that the court's order improperly convicting defendant of felony murder and the underlying felony offense was voidable and not void).

¶ 23 III. Natural Life Sentence

¶ 24 A. Death Penalty Eligibility

¶ 25 Defendant argues that his natural life sentence is void because it was based on the trial court's erroneous finding that he was eligible for the death penalty. If a judge imposes a sentence that is not authorized by statute, that sentence is void and may be attacked at any time. *People v. Thompson*, 209 Ill. 2d 19 (2004).

¶ 26 Section 9-1(b) of the Criminal Code of 1961 (Criminal Code) lists aggravating factors to first degree murder that would make a defendant eligible for the death penalty. In this case, the

trial court found an aggravating factor, namely that the victim was killed in the course of another felony and the victim was actually killed by defendant. See Ill. Rev. Stat. 1983, ch. 38, ¶ 9-1(b)(6)(a)(i). Thus, the court found defendant was eligible for the death penalty.

¶ 27 Defendant contends that because the indictment charged both defendant and Braid with the murder and the theory of accountability was not presented to the jury, the court erroneously found that he personally killed the victim. Although it is true that the indictment charged both defendants with the murder, the jury received instructions relating solely to defendant committing murder and found defendant guilty under those instructions. Additionally, defendant's contention that the court failed to find the requisite mental state of intent in order to impose the death penalty is also without merit. As stated above, it is presumed that defendant was guilty of intentional murder; therefore, defendant had the requisite mental state. Thus, contrary to defendant's assertions, he was eligible for the death penalty.

¶ 28 B. Exceptionally Brutal or Heinous Behavior

¶ 29 Defendant also argues that the trial court improperly imposed a sentence of natural life imprisonment. We disagree. Pursuant to section 1005-8-1 of the Criminal Code, if the trier of fact finds that the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty, the court may sentence defendant to a term of natural life imprisonment. Ill. Rev. Stat. 1983, ch. 38, ¶ 1005-8-1(a)(1)(b). Here, the trial court made this finding and imposed a term of natural life imprisonment. Defendant argues that the evidence was insufficient to find the offense brutal or heinous. Again, defendant has forfeited this issue by failing to raise it on direct appeal. See *Morfin*, 2012 IL App (1st) 103568. Furthermore, defendant's argument merely challenges the court's exercise of discretion in imposing sentence and does not establish that his sentence is void for failure to conform to a statutory requirement. See *Thompson*, 209 Ill. 2d 19.

¶ 30 Accordingly, we conclude that defendant's motion to vacate and section 2-1401 petition are without merit and were properly dismissed *sua sponte*.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 33 Affirmed.