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2014 IL App (3d) 130389-U

Order filed February 21, 2014

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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 10th Judicial Circuit,
	)	Stark County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-13-0389
v.	)	Circuit No. 96-CF-14
	)	
RONALD L. STOECKER,	)	Honorable
	)	Scott Shore and
	)	Stuart Borden,
Defendant-Appellant.	)	Judges, Presiding.

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

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**ORDER**

¶ 1 *Held:* The circuit court's *sua sponte* dismissal of defendant's petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)) was harmless error because the petition was meritless.

¶ 2 Defendant was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 1996)) and aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 1996)). The trial court sentenced him to concurrent sentences of natural life and 30 years in prison, respectively.

Fourteen years later, defendant filed a petition for relief from judgment under section 2-1401 of

the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)). The petition claimed that defendant was entitled to resentencing because: (1) the truth-in-sentencing provisions applicable at the time he was sentenced were later invalidated by the Illinois Supreme Court; and (2) the aggravating factor used to enhance his murder sentence was found by the trial court in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The circuit court dismissed defendant's petition as untimely. Defendant appeals.

¶ 3

## FACTS

¶ 4

### A. Procedural History

¶ 5 A jury found defendant guilty of first degree murder (720 ILCS 5/9-1(a)(2) (West 1996)) and aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 1996)). On July 17, 1998, the trial court found that the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty (see 730 ILCS 5/5-8-1(a)(1)(b) (West 1998)) and sentenced defendant to concurrent terms of natural life and 30 years in prison, respectively. In an order issued December 3, 1999, the appellate court affirmed defendant's conviction and sentences on direct appeal. *People v. Stoecker*, No. 3-98-0750 (1999) (unpublished order under Supreme Court Rule 23).

¶ 6

After filing multiple postconviction petitions that were denied, defendant filed a postconviction motion for forensic DNA testing under section 116-3 of the Code of Criminal Procedure of 1963. 725 ILCS 5/116-3 (West 2008). This court reversed the circuit court's denial of the motion. *People v. Stoecker*, 2013 IL App (3d) 110300-U. The cause is currently pending before our supreme court. *People v. Stoecker*, No. 115756.

¶ 7

### B. Present Petition and Appeal

¶ 8

On August 21, 2012, defendant filed a petition for relief from judgment under section 2-1401 of the Code. 735 ILCS 5/2-1401 (West 2012). In the petition, defendant argued he was

entitled to resentencing for two reasons. First, he contended that the "truth-in-sentencing" provisions in place at the time of his sentencing were invalidated by *People v. Reedy*, 186 Ill. 2d 1 (1999). Second, he argued that the trial court's finding of an aggravating factor to enhance defendant's murder sentence violated *Apprendi*, 530 U.S. 466.

¶ 9 The circuit court dismissed the petition as untimely, as it was filed more than two years after the entry of the sentencing order. See 735 ILCS 5/2-1401(c) (West 2012). Defendant filed a motion to reconsider, arguing that his petition attacked a void judgment and, therefore, was immune to the timeliness requirement. See 735 ILCS 5/2-1401(f) (West 2012). Defendant also argued that, even if his petition was untimely, the court erred by dismissing it *sua sponte*. Defendant claimed that the timeliness requirement of section 2-1401(c) is a statute of limitation that must be affirmatively pled by the State. The court denied defendant's motion, finding that, although the court should not have dismissed the petition *sua sponte* on timeliness grounds, the dismissal was justified because the petition was meritless. Defendant appeals.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant argues that the circuit court erred by *sua sponte* dismissing his petition for relief from judgment on the basis of timeliness. He asks this court to reverse the circuit court's dismissal and grant his petition. A court's decision to dismiss a section 2-1401 petition is reviewed *de novo*. *People v. Vincent*, 226 Ill. 2d 1 (2007).

¶ 12 Defendant is correct that the two-year limitation period contained in section 2-1401(c) is a statute of limitation rather than a jurisdictional predicate. *People v. Berrios*, 387 Ill. App. 3d 1061 (2009). As a statute of limitation, the State must assert the time limitation as an affirmative defense, and the court may not *sua sponte* dismiss the petition on the basis of timeliness. *People v. Malloy*, 374 Ill. App. 3d 820 (2007). The circuit court therefore erred by dismissing the petition for timeliness.

¶ 13 However, an erroneous dismissal on timeliness grounds is harmless if the petition was without merit, and the lack of merit could not be cured by amendment. *Malloy*, 374 Ill. App. 3d 820. We find that the dismissal of defendant's petition was harmless because the petition was meritless.

¶ 14 Defendant raised two issues in his petition, both of which were meritless. First, defendant argued that his sentences were void because the "truth-in-sentencing" provisions (730 ILCS 5/3-6-3(a)(2)(i), (ii) (West 1998)) applicable to defendant's sentences were later invalidated in *Reedy*, 186 Ill. 2d 1. Those provisions mandated, in pertinent part, that a prisoner imprisoned for first degree murder would receive no good conduct credit (730 ILCS 5/3-6-3(a)(2)(i) (West 1998)) and a prisoner imprisoned for aggravated criminal sexual assault could receive no more than 4.5 days of good conduct credit for each month of imprisonment (730 ILCS 5/3-6-3(a)(2)(ii) (West 1998)). *Reedy* invalidated those provisions because the act under which they were passed—Pub. Act 89-404 (eff. Aug. 20, 1995)—violated the single subject clause of the Illinois Constitution (Ill. Const. 1970, art. IV, § 8(d)). Defendant argues that he is therefore entitled to the good conduct credit provisions in place prior to the amendments of Public Act 89-404.

¶ 15 However, even under the prior good conduct provisions, defendant is not entitled to credit, because good conduct credit is inapplicable to a sentence of natural life. As stated in the good conduct provisions in place prior to the passage of Public Act 89-404, "the prisoner shall receive one day of good conduct credit for each day of service in prison other than where a sentence of 'natural life' has been imposed." 730 ILCS 5/3-6-3(a)(2) (West 1994). Indeed, in the present case, the sentencing court found that the truth-in-sentencing provisions of Public Act 89-404 did not apply. In addition, the application of good conduct credit to defendant's 30-year sentence for aggravated criminal sexual assault is inconsequential because of the concurrent sentence of natural life.

¶ 16 Defendant's petition also argued that he was entitled to resentencing because the trial court's finding of an aggravating factor increased the maximum available penalty for murder in violation of *Apprendi*, 530 U.S. 466. That claim is meritless because the rule established in *Apprendi* does not apply retroactively to cases whose direct appeals were exhausted prior to *Apprendi* being decided. *People v. De La Paz*, 204 Ill. 2d 426 (2003). Defendant's sentence was affirmed on direct appeal on December 3, 1999. Defendant did not file a petition for leave to appeal to our supreme court. Therefore, his direct appeal was exhausted on January 7, 2000, the deadline for filing a petition for leave to appeal. See Ill. S. Ct. R. 315(b) (eff. Oct. 1, 1997) (petition for leave to appeal must be filed within 35 days of entry of appellate court's judgment). *Apprendi* was decided on June 26, 2000, after defendant's direct appeal was exhausted. Therefore, *Apprendi* does not apply to defendant's case.

¶ 17 Both of the arguments raised in defendant's petition were meritless and their lack of merit could not be cured by amendment. Accordingly the circuit court's *sua sponte* dismissal of the petition was harmless error. *Malloy*, 374 Ill. App. 3d 820.

¶ 18 CONCLUSION

¶ 19 The judgment of the circuit court of Stark County is affirmed.

¶ 20 Affirmed.