

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).

2014 IL App (4th) 121021-U

NO. 4-12-1021

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 14, 2014

Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)

Plaintiff-Appellee,)

v.)

ISAAH GREEN,)

Defendant-Appellant.)

) Appeal from

) Circuit Court of

) Sangamon County

) No. 82CF611

) Honorable

) Patrick W. Kelley,

) Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* We grant the office of the State Appellate Defender's motion to withdraw and affirm the trial court's dismissal of defendant's section 2-1401 petition where defendant's petition was filed nearly 27 years after judgment was rendered.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as appellate counsel on the ground no meritorious issues can be raised in this case. We grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In December 1982, the State charged defendant, Isaiah Green, with first degree murder (Ill. Rev. Stat. 1981, ch. 38, ¶¶ 9-1(a)(1), (2), (3)) and armed robbery (Ill. Rev. Stat. 1981, ch. 38, ¶ 18-2(a)). Following a June 1983 trial, a jury found defendant guilty of both offenses. In August 1983, the trial court sentenced defendant to a 60-year prison term for the

murder conviction, to be served concurrently with a 15-year term for the armed-robbery conviction.

¶ 5 On direct appeal, this court affirmed defendant's conviction and sentence. *People v. Green*, 125 Ill. App. 3d 734, 466 N.E.2d 630 (1984). Defendant thereafter initiated a series of collateral attacks on the judgment.

¶ 6 In May 1985, defendant filed his first petition pursuant to the Post-Conviction Hearing Act (Act) (Ill. Rev. Stat. 1985, ch. 38, ¶¶ 122-1 to 122-8). In November 1985, the trial court granted the State's motion to dismiss defendant's petition. Defendant appealed. In May 1986, this court allowed defendant's motion to dismiss the appeal. *People v. Green*, No. 4-85-0836 (May 6, 1986) (dismissing appeal).

¶ 7 In October 1987, defendant filed his second postconviction petition. In January 1988, the State moved to dismiss defendant's petition. Defendant thereafter filed a motion to be appointed as cocounsel and later motions to dismiss his attorney and proceed *pro se*. The trial court granted defendant's motions and, after a June 1988 hearing, dismissed defendant's petition, finding it patently without merit. Defendant appealed, and this court affirmed. *People v. Green*, No. 4-88-0539 (Aug. 31, 1989) (unpublished order under Supreme Court Rule 23).

¶ 8 In December 2000, defendant filed a petition for *habeas corpus* relief pursuant to article X of the Code of Civil Procedure (Code) (735 ILCS 5/10-101 to 10-137 (West 2000)). In March 2001, defendant filed his third postconviction petition. In May 2001, defendant moved to withdraw his petition for *habeas corpus* relief. The same month, the trial court docketed defendant's petition pursuant to section 122-2.1(b) of the Act (725 ILCS 5/122-2.1(b) (West 2000)). In June 2001, the State moved to dismiss defendant's petition. In November 2001, the trial court granted the State's motion to dismiss defendant's petition. Defendant appealed, and

this court affirmed. *People v. Green*, No. 4-01-1086 (Sept. 9, 2003) (unpublished order under Supreme Court Rule 23).

¶ 9 In August 2012, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)). In this petition, defendant alleged three grounds for relief. First, defendant alleged the State knowingly and willingly presented the perjured testimony of Vincent Cooper. Specifically, defendant alleged Cooper, who was the State's "lynchpin" in this case, falsely testified he had nothing to gain from his testimony at defendant's trial when, in fact, he hoped for leniency from the State in relation his involvement in a shooting at a Springfield Kmart that occurred between December 1982 and March 1983. Second, defendant alleged the State knowingly and willingly presented the perjured testimony of "several" Springfield police officers. Specifically, defendant alleged "several" Springfield police officers falsely testified Cooper called them to his home and volunteered the statements implicating defendant when, in fact, Cooper was in the Sangamon County jail on charges stemming from the Kmart shooting. Third, defendant alleged the State withheld evidence that would have impeached Cooper's credibility. Specifically, defendant alleged the State's Attorney and Cooper made a deal wherein the State agreed to drop the charges for attempt (murder) brought in relation to the Kmart shooting in exchange for Cooper's testimony implicating defendant. Defendant did not attach to his petition an affidavit or other material to substantiate his allegations.

¶ 10 In August 2012, the State moved to dismiss defendant's section 2-1401 petition. The State argued defendant's section 2-1401 petition was filed 27 years late, citing the statute (735 ILCS 5/2-1401(c) (West 2012)). In addition, the State argued defendant's assertions the State knowingly used perjured testimony lacked factual support. In September 2012, defendant

filed a response to the State's motion to dismiss. Following an October 2012 hearing, the trial court dismissed defendant's petition.

¶ 11 This appeal followed. The trial court appointed OSAD to represent defendant on appeal. In October 2013, OSAD moved to withdraw as counsel on appeal, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). On its own motion, this court granted defendant leave to file additional points and authorities on or before November 25, 2013. Defendant filed none.

¶ 12 II. ANALYSIS

¶ 13 On appeal, OSAD contends no colorable argument can be made the trial court erred by finding defendant's section 2-1401 petition was untimely and granting the State's motion to dismiss. We agree.

¶ 14 We review *de novo* the trial court's dismissal of a section 2-1401 petition. *People v. Vincent*, 226 Ill. 2d 1, 18, 871 N.E.2d 17, 28 (2007). We will affirm the court's judgment on any basis supported by the record if the judgment is correct. *People v. Harvey*, 379 Ill. App. 3d 518, 521, 884 N.E.2d 724, 728 (2008).

¶ 15 The purpose of a section 2-1401 petition is to bring before the trial court factual matters, unknown to the court and party seeking relief at the time judgment was rendered, which would have prevented the entry of the contested judgment. *People v. Pinkonsly*, 207 Ill. 2d 555, 566, 802 N.E.2d 236, 243 (2003). Generally, section 2-1401 petitions must be filed within two years of the judgment from which relief is sought. 735 ILCS 5/2-1401(c) (West 2012). This strict time limitation will not be relaxed absent a *clear* showing "the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed[.]" *Id.*; *People v. Caballero*, 179 Ill. 2d 205, 211, 688 N.E.2d 658, 660-61 (1997).

¶ 16 In this case, the trial court rendered its final judgment when it sentenced defendant on August 9, 1983. The two-year-limitations period contained in section 2-1401(c) thus expired on August 9, 1985. 735 ILCS 5/2-1401(c) (West 2012). On August 2, 2012, defendant filed the section 2-1401 petition at issue in this case. Defendant's petition was nearly 27 years late. Defendant's petition does not allege any facts showing he was under legal disability or duress, which would toll the limitations period. Further, defendant's petition does not allege any facts showing the State concealed the grounds for relief through fraud, which would toll the limitations period. Although defendant's petition does allege the State withheld from defendant evidence of a plea agreement between the State and Cooper, he failed to include an affidavit or other material showing (1) Cooper was in the Sangamon County jail when he first made a statement implicating defendant, or (2) a plea agreement existed between Cooper and the State. 735 ILCS 5/2-1401(b) (West 2012). No colorable argument can be made the trial court erred by granting the State's motion to dismiss defendant's section 2-1401 petition.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 19 Affirmed.