

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) 121029-U

NO. 4-12-1029

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 8, 2014

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
SHAWN M. BAHRS,)	No. 11CF204
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court. Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The denial of defendant's petition for relief from judgment is affirmed because he failed to show a meritorious defense to the charges in the underlying criminal case.

¶ 2 Defendant, Shawn M. Bahrs, is serving sentences of imprisonment for aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2010)), driving while his driver's license was revoked (625 ILCS 5/6-303(a) (West 2010)), and aggravated fleeing (625 ILCS 5/11-204.1(a)(4) (West 2010)). He petitioned the trial court for relief from judgment (735 ILCS 5/2-1401 (West 2012)). On the State's motion, the court denied and dismissed the petition. He appeals.

¶ 3 The office of the State Appellate Defender (OSAD) has moved to withdraw from representing defendant in this appeal, because OSAD concludes that no reasonable argument

could be made in support of this appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Along with its motion, OSAD has filed a memorandum suggesting some potential issues for review and explaining why they are inarguable. Defendant has submitted additional points and authorities. The State has filed a brief, to which defendant has responded with a reply brief.

¶ 4 After considering these arguments and analyses and after reviewing the record, we agree with OSAD's assessment of the merits of this appeal. Therefore, we grant OSAD's motion to withdraw, and we affirm the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 A. History of Proceedings to the Present Date

¶ 7 In July 2011, a jury found defendant guilty of aggravated DUI (625 ILCS 5/11-501(a)(2) (West 2010)), driving while his driver's license was revoked (625 ILCS 5/6-303(a) (West 2010)), and aggravated fleeing (625 ILCS 5/11-204.1(a)(4) (West 2010)).

¶ 8 In September 2011, the trial court sentenced him to imprisonment for those offenses. In April 2013, on direct appeal, we vacated the sentences and remanded the case for resentencing because of a defective admonition. *People v. Bahrs*, 2013 IL App (4th) 110903, ¶ 1.

¶ 9 In June 2012, while his direct appeal was still pending, defendant filed a petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)). In August 2012, the trial court denied and dismissed the petition on the State's motion.

¶ 10 In July 2013, on remand from the direct appeal, the trial court resentenced defendant to 30 years' imprisonment for aggravated DUI, 3 years' imprisonment for driving while his driver's license was revoked, and 3 years' imprisonment for aggravated fleeing. (We

have obtained the resentencing information from the Web site of the Champaign County circuit clerk. Cf. *People v. Mitchell*, 403 Ill. App. 3d 707, 709 (2010) (taking judicial notice of the official Web site of DOC)).

¶ 11 Thus, although our initial vacation of the sentences might have made the petition for relief from judgment temporarily moot (considering that the judgment in a criminal case is the sentence (*People v. Allen*, 71 Ill. 2d 378, 381 (1978))), the resentencing has returned the petition squarely into the realm of actual controversy. See *People v. Campa*, 217 Ill. 2d 243, 269 (2005) ("As a general rule, a court of review will not decide moot or abstract questions or render advisory opinions.").

¶ 12 B. The Petition for Relief From Judgment

¶ 13 To understand defendant's petition for relief from judgment, one must understand Illinois Supreme Court Rule 295 (eff. May 28, 1975). According to Rule 295, either the chief judge of a circuit or a circuit judge designated by the chief judge "may assign an associate judge to hear and determine any matters except the trial of criminal cases in which the defendant is charged with an offense punishable by imprisonment for more than one year." Ill. S. Ct. R. 295 (eff. May 28, 1975). Before assigning an associate judge to preside over trials in which imprisonment could exceed one year, the chief judge must obtain permission from the supreme court. The rule provides:

"Upon a showing of need presented to the supreme court by the chief judge of a circuit, the supreme court may authorize the chief judge to make temporary assignments of individual associate judges to conduct trials of criminal cases in which the defendant is

charged with an offense punishable by imprisonment for more than one year." Ill. S. Ct. R. 295 (eff. May 29, 1975).

¶ 14 On July 6, 2007, pursuant to Rule 295, John P. Shonkwiler, the chief judge of the Sixth Judicial Circuit, requested authority from the supreme court to assign 11 named associate judges, including Richard P. Klaus, to conduct trials of criminal cases in which the charged offense was punishable by imprisonment for more than one year. He requested this authority to last from July 1, 2007, to June 30, 2011. He explained that "[t]he workload of the Circuit Judges of the Felony Division require[d] such assignment."

¶ 15 On July 13, 2007, the then-chief justice of the supreme court, Robert R. Thomas, granted Judge Shonkwiler's request. The authorization was on the same form as the request. It read:

"It is hereby ordered that from July 1, 2007 to June 30, 2011 the above-named Associate Judges are granted authority to conduct trials of criminal cases in which the defendant is charged with an offense punishable by imprisonment for more than one year."

¶ 16 On June 24, 2011, Judge Shonkwiler submitted another such request to the supreme court, but this time the request pertained only to Judge Klaus. On July 1, 2011, then-Chief Justice Thomas L. Kilbride ordered that from July 1, 2011, to June 30, 2015, Judge Klaus was "granted authority to conduct trials of criminal cases in which the defendant [was] charged with an offense punishable by imprisonment for more than one year."

¶ 17 Judge Klaus presided over defendant's trial, which was held on July 19 and 20,

2011.

¶ 18 In his petition for relief from judgment, defendant claimed that, for two reasons having to do with Rule 295, the supreme court did not succeed in authorizing Judge Klaus to preside over his trial: (1) the four-year period of the authorization was not "temporary," and (2) the assignment of 11 named associate judges was not an "individual" assignment. Ill. S. Ct. R. 295 (eff. May 28, 1975). *Id.* Consequently, he asserted that the judgment against him in the criminal case was "void *ab initio*."

¶ 19 Also, defendant considered the judgment to be "void *ab initio*" because the presiding judge of the Champaign County circuit court, Judge Thomas J. Difanis, had assigned Judge Klaus to preside over all DUI cases, allegedly so that they would more consistently end in serious punishment for the perpetrators. As proof, defendant attached to his petition an article from the May 11, 2009, edition of The News-Gazette, in which Judge Difanis discusses his idea of "hav[ing] a separate court dedicated to hearing [DUI] cases," with Judge Klaus "at [the] helm" of the DUI court. The article explains:

"Unlike drug court, DUI court will not focus on rehabilitation.

'You will not be able to walk in, plead guilty and get court supervision,' Difanis said.

That doesn't mean that court supervision, the least severe form of punishment, won't be an option, Difanis said. It just means that a person who chooses to plead guilty will have to let Klaus decide if supervision is appropriate. Prosecutors and defense

attorneys will no longer be able to negotiate that sentence."

¶ 20 In his petition for relief from judgment, defendant initially challenges the DUI court as being "focused only on prosecution"—as having, for its *raison d'être*, the decreased granting of court supervision for DUI. He claims that Judge Difanis "abandoned his role as a neutral and impartial arbiter of facts by somewhat adopting a prosecutorial role when creating this new[] DUI court."

¶ 21 Not only is the DUI court, in defendant's view, conceptually flawed as a device for implementing Judge Difanis's alleged prosecutorial bias, but its creation was, in his view, procedurally flawed in four ways. First, under Rule 295, only the chief judge may "assign associate judge[s] to hear felony cases."

¶ 22 Second, Rule 1.1(a) of the Rules of the Sixth Judicial Circuit and also Illinois Supreme Court Rule 21(a) (eff. Dec. 1, 2008) contemplate that a majority of the circuit judges in a circuit will adopt rules governing criminal cases. Defendant regards the creation of the new DUI court as a rule governing criminal cases, a rule that, in his view, should have been adopted by the majority of circuit judges in the Sixth Judicial Circuit rather than unilaterally by Judge Difanis.

¶ 23 Third, "this new DUI court was not uniformed [*sic*] with other courts throughout the state."

¶ 24 Fourth, according to the petition, the "rule" creating the new DUI court was not "filed with the Administrative Director within 10 days after [it was] adopted," as Illinois Supreme Court Rule 21(a) (eff. Dec. 1, 2008) required.

¶ 25 II. ANALYSIS

¶ 26 When, as in the present case, a petition for relief from judgment is denied on the pleadings, our standard of review is *de novo*. *In re M.P.*, 401 Ill. App. 3d 742, 745 (2010).

¶ 27 Section 2-1401 (735 ILCS 5/2-1401 (West 2012)) affords a means of challenging a judgment that is more than 30 days old. *In re Haley D.*, 2011 IL 110886, ¶ 58. The remedial powers of section 2-1401 extend not only to civil cases but also to criminal cases. *People v. Harvey*, 196 Ill. 2d 444, 447 (2001).

¶ 28 Unless the challenged judgment is void, a petitioner under section 2-1401 must show two things by a preponderance of the evidence: (1) a meritorious claim or defense in the original action and (2) due diligence in presenting the petition for relief from judgment. *Haley D.*, 2011 IL 110886, ¶ 58.

¶ 29 A judgment is void only if the court lacked jurisdiction. *People v. Davis*, 156 Ill. 2d 149, 155 (1993). There is subject-matter jurisdiction, and there is personal jurisdiction. Our constitution confers on circuit courts the subject-matter jurisdiction "to hear and decide all matters of controversy," including the controversy of whether the defendant violated a criminal statute. *Id.* at 157. A court acquires personal jurisdiction when the defendant personally appears before the court. *People v. Kleiss*, 90 Ill. App. 3d 53, 55 (1980).

¶ 30 The trial court in this case had subject-matter jurisdiction to decide whether defendant committed the charged offenses. See *Davis*, 156 Ill. 2d at 157. The incorrect assignment of a judge to defendant's case would not have deprived the court of subject-matter jurisdiction, because such jurisdiction was vested in the court rather than in a judge. See *People v. Zajic*, 88 Ill. App. 3d 412, 414 (1980). The court obtained personal jurisdiction over defendant when he personally appeared for his arraignment on February 8, 2011. See *Kleiss*, 90 Ill. App.

3d at 55.

¶ 31 Because the trial court had both subject-matter jurisdiction and personal jurisdiction in the underlying criminal case, defendant had to show, in the section 2-1401 proceeding, a meritorious defense to the charges of aggravated DUI (625 ILCS 5/11-501(a)(2) (West 2010)), driving while his driver's license was revoked (625 ILCS 5/6-303(a) (West 2010)), and aggravated fleeing (625 ILCS 5/11-204.1(a)(4) (West 2010)). He did not do so. Even if defendant were correct in his contention that, for various reasons, Judge Klaus should not have been assigned to preside over his jury trial, that contention would not be a meritorious defense to the charges. See *Haley D.*, 2011 IL 110886, ¶ 58. The remedy would have been a different judge, not an acquittal. Technical procedural errors are no basis for relief under section 2-1401. *First National Leasing Corp. v. E.T.P. of Chicago, Inc.*, 158 Ill. App. 3d 882, 886 (1987). "It has long been held that a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure *** is addressed to errors of fact, not errors of law." *Id.* at 885-86.

¶ 32

III. CONCLUSION

¶ 33 For the foregoing reasons, we grant OSAD's motion to withdraw, and we affirm the trial court's judgment. We award the State \$50 in costs against defendant.

¶ 34 Affirmed.