

No. 13-2156

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 DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Respondent-Appellee,)	
)	
v.)	No. 01 CR 24897
)	
MICHAEL ARCHER,)	
)	Honorable Domenica A. Stephenson
Petitioner-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

ORDER

Held: The trial court properly dismissed defendant's *pro se* postconviction petition because defendant lacked standing to raise his claim under the Post-Conviction Hearing Act. Defendant waived his right to be tried as a juvenile because he did not assert his age promptly in the proceedings below.

¶ 1 Defendant, Michael Archer¹, pleaded guilty to possession of a controlled substance with intent to deliver. Defendant filed a postconviction petition where he claimed that he was a

¹ Defendant's legal name is Shelby Lee Young, Jr. However, to remain consistent with the caption of the case and with how the parties have referred to defendant throughout the proceedings we will refer to him as Michael Archer.

juvenile at the time of the offense but he was charged and convicted as an adult. The trial court dismissed the petition because defendant lacked standing to raise his claim under the Post-Conviction Hearing Act, (725 ILCS 5/122-1 *et seq.* (West 2013)), when defendant finished serving his sentence at the time he filed his postconviction petition. Defendant appeals the trial court's dismissal and contends for the first time on appeal that his conviction and sentence are void.

¶ 2

BACKGROUND

¶ 3 Defendant was charged by indictment with two counts of possession of a controlled substance. Count 1 charged defendant with possession of a controlled substance (PCP) with intent to deliver within 1000 feet of Howland Elementary School. 720 ILCS 401(E)/407(b)(3) (West 2001). Count 2 charged defendant with possession of a controlled substance (PCP) with intent to deliver. 720 ILCS 401(E) (West 2001). The arrest report indicates defendant's alias, Michael Archer, and defendant's birthday as April 27, 1981, making him 20 years old at the time of his arrest on September 13, 2001. On October 25, 2001, defendant pleaded guilty to Count 2 and received a sentence of 24 months of probation. The State nol-prossed Count 1 of the indictment. On the same date, defendant indicated that his name was Sheldon Young but that he also went by the name of Michael Archer.

¶ 4 Defendant violated his probation several times. On one such occasion, the trial court ordered a Treatment Alternatives for Safe Communities (TASC) evaluation of defendant's case. The TASC evaluation report lists defendant's legal name "Shelby Young, aka: Michael Archer." The trial court's resentencing order dated October 23, 2002, lists defendant's date of birth as "4/27/85". On June 19, 2003, defendant's probation was terminated unsatisfactorily. Defendant did not file a motion to withdraw his guilty plea and did not file a direct appeal.

¶ 5 On April 10, 2013, while in federal custody on an unrelated federal charge, defendant filed a *pro se* petition for postconviction relief where he contended that he was a juvenile when he pleaded guilty on October 25, 2001, but he was erroneously charged and convicted as an adult. Defendant claimed that, following his arrest, he informed his counsel that he was a juvenile, but counsel advised him that the State would proceed with the charges regardless. Defendant contended that he pleaded guilty based on counsel's advice. Defendant also stated in his petition that counsel did not advise him about the consequences of pleading guilty as "an adult petitioner," especially that he would be subjected to more severe penalties for committing an offense subsequent to his guilty plea.

¶ 6 On June 7, 2013, the circuit court dismissed defendant's petition based on defendant's lack of standing because defendant had fully served his sentence at the time he filed his petition.

¶ 7 Defendant appeals the circuit court's order. On appeal, for the first time, defendant claims that his conviction and sentence are void because he was a juvenile when he pleaded guilty to possession of a controlled substance and he was never properly charged and convicted as a juvenile. Defendant argues that the indictment did not state that he was on a "public way" within a 1000 feet of a school in order to trigger the excluded jurisdiction provision of the Juvenile Court Act. 705 ILCS 405/5–130(2)(a) (West 2001).

¶ 8 ANALYSIS

¶ 9 The Post-Conviction Hearing Act, (725 ILCS 5/122–1 *et seq.*), provides a process by which a criminal defendant may challenge his or her conviction by filing a petition in the circuit court. 725 ILCS 5/122–1. The Act provides for a three-stage process for adjudicating postconviction petitions. *People v. Harris*, 224 Ill. 2d 115, 125 (2007). At the first stage, the court independently assesses the merit of the petition. 725 ILCS 5/122-2.1. If the court finds the

petition to be “frivolous” or “patently without merit,” the court shall dismiss the petition. 725 ILCS 5/122.1(a)(2). At the first stage of postconviction proceedings, the circuit court must take the petition's factual allegations as true, unless those allegations are contradicted by the record. *People v. Coleman*, 183 Ill. 2d 366, 382 (1998).

¶ 10 Initially, this court notes that both defendant and the State agree that the trial court did not err when it dismissed defendant's postconviction petition because he lacked standing. When a defendant has fully served his underlying sentence before filing a postconviction petition, he no longer has standing to file a petition. *People v. Vinokur*, 2011 IL App (1st) 090798, ¶ 6. Here, defendant filed his petition on April 10, 2013, more than ten years after he finished serving his sentence on June 19, 2003, when his probation was terminated. Therefore, defendant did not have standing to file his postconviction petition and the trial court did not err when it dismissed it based on lack of standing.

¶ 11 I. Jurisdiction on Appeal

¶ 12 Nonetheless, defendant claims that, even though he did not have standing to file a postconviction petition, his claim that his conviction and sentence are void is properly before this court because void sentences can be challenged at any time. Defendant contends that his lack of standing under the Post-Conviction Hearing Act does not result in this court's lack of subject matter jurisdiction over a voidness claim. The State argues that the issue of voidness was not raised in the context of a proceeding that was properly pending before the circuit court and, therefore, this court should not consider petitioner's claim and should affirm the circuit court's dismissal of defendant's petition. Furthermore, the State argues that defendant's conviction is merely voidable and is not subject to collateral attack.

¶ 13 The postconviction cases in our jurisdiction are not uniform on the issues of standing and subject matter jurisdiction. *People v. Vasquez*, 2013 IL App (2d) 120344, ¶ 18. In *People v. Vinokur*, the Third Division held that a postconviction claim of a void sentence was not cognizable on appeal when the petitioner lacked standing under the Post-Conviction Hearing Act due to the completion of his sentence. *People v. Vinokur*, 2011 IL App (1st) 090798, ¶ 18. The *Vinokur* court, relying on *People v. Flowers*, 208 Ill. 2d 291, 308 (2003), recognized that a void order may be attacked at any time, either directly or collaterally, but only in a proceeding properly pending in the courts. *Id.* ¶ 16. citing *People v. Flowers*, 208 Ill. 2d at 308 (holding that because the trial court lacked subject matter jurisdiction over an untimely posttrial motion, the appellate court's jurisdiction was limited to considering the trial court's lack of jurisdiction and did not extend to the merits of the defendant's attempt to challenge a portion of her sentence as void).

¶ 14 In *Vinokur*, the defendant pled guilty to one count of possession of cannabis with the intent to deliver and was sentenced to 24 months of probation. *Id.* ¶ 3. After his probation was successfully completed, the defendant filed a postconviction petition alleging that his guilty plea was involuntary. *Id.* ¶ 4. The trial court summarily dismissed the defendant's petition based on a lack of standing. *Id.* This court agreed that, for the purposes of the Act, defendant was no longer imprisoned and thus had no standing to bring a postconviction petition. *Id.* ¶ 14. This court stated that, although the appeal before it was proper, it could not consider the merits but had the authority to determine only whether the trial court was correct in dismissing the defendant's petition for lack of standing. *Id.* ¶¶ 17–18.

¶ 15 In *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 40, the Fourth Division disagreed with the *Vinokur* court and held that “[s]tanding has no effect on subject matter jurisdiction.” In

Henderson, defendant appealed the trial court's dismissal of his postconviction petition. *Id.* ¶ 1. Defendant raised for the first time on appeal the claim that his conviction for delivery of a controlled substance within 1,000 feet of a school was void because the automatic transfer provision of the Juvenile Court Act of 1987 (705 ILCS 405/5–130(2) (a)(West 2004)) did not authorize his transfer from juvenile court to criminal court. *Id.*

¶ 16 Even though the *Henderson* court determined that the defendant had lost standing under the Post-Conviction Hearing Act because his mandatory supervised release (MSR) term ended while the appeal of the dismissal of his postconviction petition was pending, the court reasoned that the issue of whether the defendant's conviction was void was properly before it. *Henderson*, 2011 IL App (1st) 090923, ¶¶ 40–41. The court in *Henderson* noted that unlike the situation in *Flowers* where the court lacked subject matter jurisdiction to hear the defendant's untimely motion to reconsider, in *Vinokur*, the trial court had subject matter jurisdiction over the defendant's postconviction petition. The court noted that the parties had not challenged its or the trial court's jurisdiction which was an issue distinct from standing. *Id.* ¶ 40; accord *People v. Vasquez*, 2013 IL App (2d) 120344, ¶¶ 6, 17-23 (holding that even though a defendant lacked standing to file a *pro se* postconviction petition because he finished serving his sentence at the time the petition was filed, the defendant's lack of standing did not divest the court of subject matter jurisdiction over the petition).

¶ 17 Here, the trial court had subject matter jurisdiction over defendant's postconviction petition even though defendant lacked standing to raise constitutional claims under the Post-Conviction Hearing Act. Although defendant did not raise the claim that his conviction and sentence are void in his post-conviction petition, his lack of standing does not bar him from raising it on appeal. A void judgment may be challenged directly or collaterally at any time, in

any court which has jurisdiction. *People v. Thompson*, 209 Ill. 2d 19, 25 (2004). Therefore, we may review the issue on appeal because the dismissal of defendant's post-conviction petition is properly before this court.

¶ 18 II. Void Conviction and Sentence

¶ 19 Defendant contends that his conviction is void because he was a juvenile at the time of the offense and was not charged with being on a "public way" at the time he committed the offense, as required to authorize his transfer to adult criminal court pursuant to section 5–130(2)(a) of the Juvenile Court Act. 705 ILCS 405/5–130(2)(a) (West 2001). Defendant argues that the trial court lacked the statutory authority or jurisdiction to convict and sentence defendant because the excluded jurisdiction under the Juvenile Court Act was not triggered. The State contends that the circuit court had jurisdiction over defendant's case and that defendant's conviction and sentence are voidable not void.

¶ 20 Whether a judgment is void presents a legal question, which we review *de novo*. *People v. Hauschild*, 226 Ill. 2d 63, 72 (2007); *People v. Rodriguez*, 355 Ill. App. 3d 290, 291 (2005).

¶ 21 Defendant relies on *People v. Rodriguez*, 355 Ill. App. 3d 290 as support for his claim. In *People v. Rodriguez*, the defendant was a minor when he committed the offense of unlawful delivery of a controlled substance. *Id.* at 291-92. The defendant was charged as a juvenile, but the trial court granted the State's motion for the automatic transfer of defendant to the adult criminal court pursuant to the Juvenile Court Act requiring transfer where the offense was committed on a public way. *Id.* at 292. Several years after the defendant's direct appeal, he filed what was characterized as a petition pursuant to section 2–1401 of the Code (735 ILCS 5/2–1401 (West 2002)). *Id.*

¶ 22 On appeal, the defendant claimed his conviction was void because the gas station parking lot where the offense was alleged to have occurred was not a "public way" and absent an allegation that his offense occurred on a public way, the transfer provision of the Juvenile Court Act did not authorize the court to treat him as an adult. *Id.* at 293. Ultimately, this court agreed, finding that the Juvenile Court Act did not authorize the automatic transfer of the defendant to criminal court because a gas station does not constitute a public way. *Id.* at 295–96. This court stated that the trial court lacks the power to impose a criminal conviction and sentence where the Juvenile Court Act mandates a juvenile adjudication and juvenile punishment. *Id.* at 296.

¶ 23 Defendant's reliance on *Rodriguez* is misplaced. In the instant case, although the indictment did not charge defendant with being on a "public way," petitioner was never charged as a juvenile or transferred from the juvenile court to the adult court. Instead, he was charged and convicted as an adult.

¶ 24 A judgment is void, as opposed to voidable, only where the trial court lacked jurisdiction or exceeded its statutory authority to act. *People v. Smith*, 406 Ill. App. 3d 879, 887 (2010). Prosecution of a juvenile in adult criminal proceedings without regard to the transfer provisions set forth in the statute renders the disposition voidable rather than void. *People v. Arnold*, 323 Ill. App. 3d 102, 105 (2001) citing *People v. Hall*, 55 Ill. App. 3d 341, 343 (1977).

¶ 25 Here, defendant pleaded guilty and was sentenced as an adult. The trial court had jurisdiction over defendant's case because whether a person is tried in juvenile or criminal court is a matter of procedure rather than jurisdiction and the juvenile court is merely a division of a single unified circuit court. See *People v. P.H.*, 145 Ill. 2d 209, 222 (1991). Furthermore, although defendant's conviction and sentence are voidable because defendant was never

transferred to the juvenile court, defendant did not assert his age promptly in the proceedings below and waived his right to be tried as a juvenile.

¶ 26 In *People v. Arnold*, a defendant-minor misrepresented his age to the court as 17 years old and then pled guilty to robbery and attempted robbery. *Arnold*, 323 Ill. App. 3d at 103. The court sentenced defendant to two years of felony probation, 60 days in jail and 60 days of home confinement. *Id.* The minor continued to misrepresent his age until he was captured after an escape from boot camp. *Id.* at 104. When the court sentenced him as an adult for the escape, he then raised the issue of his age for the first time. *Id.* On appeal from the court's denial of his motion to vacate his guilty plea, the defendant contended that his convictions should be vacated pursuant to the Juvenile Court Act. *Id.* We rejected that claim, holding that where a defendant has been tried, found guilty and sentenced, he cannot then assert age as an issue, as the right to be prosecuted under the Juvenile Court Act has been waived. *Id.* at 108.

¶ 27 Similarly, in the instant case, defendant failed to assert that he was a juvenile when he was arrested for possession of a controlled substance or at anytime during the trial proceedings. After being assigned a public defender, defendant entered a guilty plea for Count 2, possession of a controlled substance with intent to deliver and received a sentence of 24 months of probation. His age was never raised as an issue. Defendant violated his probation several times. At one point, defendant's legal name and his actual date of birth of April 27, 1985, were listed in the trial court's order for a TASC evaluation, dated September 11, 2002, and in the trial court's resentencing order of October 23, 2002. However, defendant never informed the court that he was 16 years old at the time of the offense. Instead, defendant raised this issue for the first time ten years after the entry of his judgment of conviction. Because defendant did not promptly assert his age as a defense to being prosecuted under the criminal court, he is not permitted to

proceed through adult criminal proceedings and then attempt to use the juvenile transfer provision "upon an unfavorable outcome." See *People v. Fox*, 258 Ill. App. 3d 534, 536 (1994).

Therefore, the trial court properly dismissed defendant's postconviction petition as defendant lacked standing. Defendant waived his right to be tried as a juvenile.

¶ 28

CONCLUSION

¶ 29 Accordingly, we affirm the judgment of the circuit court.

¶ 30 Affirmed.