2015 IL App (1st) 132658

FIRST DIVISION
December 14, 2015

No. 1-13-2658



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Respondent-Appellee, | ) | Cook County |
| | ) | |
| v. | ) | No. 89 CR 6782 |
| | ) | No. 89 CR 6783 |
| | ) | No. 89 CR 6784 |
| | ) | |
| THEODORE LUCZAK, | ) | Honorable |
| | ) | William J. Kunkle, |
| Petitioner-Appellant. | ) | Judge Presiding. |

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

**ORDER**

***Held:*** We affirm the dismissal of petitioner-appellant's §2-1401 petition as not timely. At the 1990 sentencing hearing, petitioner stipulated that the sexual assaults to which he pleaded guilty occurred in Cook County, Illinois. This provided a basis by which the court could exercise subject matter jurisdiction and enter judgment against him. Accordingly, those judgments are not void and the trial court was correct to dismiss the §2-1401 petition as not timely.

¶ 1 Petitioner-appellant (hereinafter "petitioner") sexually assaulted three women in 1989. In February 1990, petitioner pled guilty to sexually assaulting those women and was sentenced to 10 years in prison. As part of pleading guilty, petitioner stipulated to the fact that all three crimes took place in Cook County, Illinois. In 1995, petitioner was charged with a number of sexual offenses. The three victims from petitioner's 1989 crimes testified at his 1995 trial. Petitioner claims that during their testimony each of them admitted that the 1989 crimes occurred in Indiana. Petitioner was found guilty in the 1995 case and sentenced to 100 years. In April 2013, petitioner filed a §2-1401 petition alleging that the 1990 judgments were void because the trial court lacked subject matter jurisdiction to enter them. Petitioner based his contention on the belief that the 1989 victims testimony at his 1995 trial established the crimes took place in Indiana. The State did not file a responsive pleading to petitioner's §2-1401 petition. On June 14, 2013 the trial court denied the motion by written order, finding that the petition was not timely and that no relief was available due to waiver. Petitioner filed a motion to reconsider, which was denied. He then timely filed this appeal.

¶ 2 Petitioner raises one issue on appeal: whether the trial court erred in dismissing his §2-1401 petition as not timely. We hold that the trial court properly dismissed petitioner's §2-1401 petition. Petitioner stipulated to the fact the 1989 sexual assaults occurred in Cook County, Illinois. This provided the factual basis by which the court exercised subject matter jurisdiction over the State's action against petitioner. Accordingly, the 1990 judgments were not void and should have been challenged within two years. Since they were not, dismissal was appropriate and the trial court's decision is affirmed.

¶ 3 JURISDICTION

¶ 4 Petitioner-appellant appeals the dismissal of his Petition for Relief from Judgment pursuant to 735 ILCS 5/2-1401 (West 2010). The trial court denied the petition on June 14, 2013. Petitioner's Motion to Reconsider was denied on July 12, 2013. Petitioner timely filed his notice of appeal on August 5, 2013. Accordingly, this court has jurisdiction pursuant to Article VI, Section 6 of the Illinois constitution and Illinois Supreme Court Rule 651(a).

¶ 5 BACKGROUND

¶ 6 On March 22, 1989, petitioner-appellant, Theodore Luczak, was charged in three indictments with criminal sexual assault against three young women. In the first indictment, petitioner was charged with two counts of criminal sexual assault, one count of aggravated kidnapping, and one count unlawful restraint against the 17-year old victim, N.D. In the second indictment, petitioner was charged with two counts of aggravated criminal sexual abuse, and one count of unlawful restraint against the victim, P.S. In the third indictment, petitioner was charged with two counts of criminal sexual assault, one count of aggravated kidnapping, two counts of aggravated criminal sexual abuse, and one count of unlawful restraint against the 15-year old victim, V.C.

¶ 7 On February 2, 1990, petitioner requested a Supreme Court Rule 402 conference. After the conference, petitioner pled guilty to two counts of aggravated criminal sexual assault against P.S., guilty to two counts of criminal sexual assault against N.D., and guilty to two counts of criminal sexual assault against V.C.

¶ 8 At the hearing, the trial court read the three indictments for the record and admonished petitioner of his rights and possible sentences. Petitioner, who was 24 years-old at the time of his plea, indicated he understood his rights. The parties then stipulated to the factual basis of

each indictment. For victim P.S., the parties stipulated to an address where the aggravated criminal sexual assault occurred, an alleyway located at 10200 South Michigan. For the factual basis for the crimes against V.C. and N.D., the parties stipulated to the fact that "[a]ll events happened in Cook County, Illinois." Petitioner was sentenced to 10 years in the Illinois Department of Corrections on Case No. 89 CR 6782; six years concurrent on Case No. 89 CR 6783; and six years concurrent on Case No. 89 CR 6784. Petitioner did not file an appeal.

¶ 9 After serving those concurrent sentences, petitioner was charged under indictment No. 95 CR 14188 with aggravated criminal sexual assault, criminal sexual assault, aggravated kidnapping, and unlawful restraint. Petitioner's three previous victims testified during trial. Petitioner claims that during each of their testimony, they admitted the 1989 crimes occurred in Indiana. A jury found petitioner guilty of two counts of aggravated criminal sexual assault and he was sentenced to consecutive prison terms of 60 and 40 years. Petitioner appealed this conviction, arguing that the trial court erred in allowing evidence of one of his prior crimes of sexual assault. The appellate court affirmed and held that the prior evidence was relevant to petitioner's intent and *modus operandi*. See *People v. Luczak*, 306 Ill.App.3d 319, 326-27 (1st Dist. 1999), appeal denied, 185 Ill.2d 650 (1999), cert denied, 528 U.S. 1164 (2000).

¶ 10 In June of 1999, petitioner, filed a *pro se* post-conviction petition to allow DNA testing of evidence in connection with case No. 95 CR 14118. It was denied on July 7, 1999. Petitioner did not appeal. On March 27, 2000, petitioner filed a post-conviction petition alleging various issues including ineffective assistance of counsel and due process violations. The petition was denied. Petitioner appealed and the trial court's decision was affirmed on June 25, 2001. *People v. Luczak*, 323 Ill.App.3d 1148 (2001) (unpublished order under Supreme Court Rule 23).

¶ 11 In May 2011, petitioner filed a *pro se* motion to vacate a void judgment in case No. 95 CR 14118, arguing his consecutive extended term sentences were unconstitutional under *Apprendi*. The trial court dismissed the petition and the appellate court affirmed. *People v. Luczak*, No. 01-3197, 2003 Ill.App. LEXIS 1137 (2003) (unpublished order under Supreme Court Rule 23).

¶ 12 In September 2002, petitioner filed a *habeas corpus* petition alleging his indictment in case No. 95 CR 14118 was faulty and the court could not have entered a valid judgment. The trial court denied the petition on October 22, 2002, and the appellate court affirmed. *Luczak v. Mote*, No. 1-03-0005 (2004) (unpublished order under Supreme Court Rule 23).

¶ 13 On January 10, 2005, petitioner filed a motion pursuant to §116-3 and also a *pro se* Petition for a Writ of *Habeas Corpus Ad Testificandum* seeking to appear in court and argue the motion. The trial court denied the *habeas corpus* petition and the §116-3 motion.

¶ 14 On February 14, 2005, petitioner filed a motion for free transcripts, alleging he would seek to withdraw his guilty pleas in Case Nos. 89 CR 6782, 89 CR 6783, 89 CR 6784. On July 1, 2005, petitioner filed his motion to withdraw his guilty pleas.

¶ 15 In July 2005, petitioner was granted leave to file a late notice of appeal from the 1990 guilty pleas. Petitioner then filed a consolidated appeal regarding the denial of the §116-3 motion, the denial of his *habeas corpus* petition, and the denial of his request for free transcripts. The appellate court affirmed all three of the trial court's denials. *People v. Luczak*, 374 Ill.App.3d 172 (1st Dist. 2007).

¶ 16 On April 11, 2013, petitioner filed a Petition for Judicial Notice, a Petition for Writ of *Habeas Corpus Ad Testificandum*, and a §2-1401 Petition for Relief from Void Judgments in cases 89 CR 6782, 89 CR 6783, 89 CR 6784. On June 14, 2013 the trial court, *sua sponte*,

dismissed the petition by written order. On July 12, 2013, the trial court denied petitioner's motion to reconsider.

¶ 17 Petitioner timely filed a Notice of Appeal on August 5, 2013.

¶ 18 ANALYSIS

¶ 19 Petitioner raises one issue on appeal: whether the trial court erred in ruling that his §2-1401 petition was not timely filed.

¶ 20 On appeal, petitioner contends the judgments stemming from the three indictments in 1989 are void. Petitioner claims the trial court did not have jurisdiction to adjudicate those offenses because they occurred in Indiana not Illinois. Petitioner contends that when the three victims from his 1989 crimes testified at his 1995 criminal proceeding, they testified the crimes occurred in Indiana. Accordingly, petitioner contends the judgments are void and can be challenged at any time.

¶ 21 The State responds that at the petitioner's sentencing hearing in February 1990, petitioner stipulated to the fact that the all events related to the three indictments took place in Cook County, Illinois. This stipulation allowed the trial court to exercise subject matter jurisdiction over the petitioner's case and enter the judgments against him. Accordingly, the judgments are not void and the petition was correctly dismissed as untimely.

¶ 22 When a trial court, as it did here, dismisses a §2-1401 petition *sua sponte*, our review is *de novo*. See *People v. Vincent*, 226 Ill.2d 1, 13-15 (2007) (finding that when the trial court dismisses a §2-1401 petition on the pleadings alone, a reviewing court must use the same standard of review as it would when a trial court enters judgment on the pleadings or dismisses a complaint, which is a *de novo* standard of review).

¶ 23 The trial court was correct to dismiss petitioner's §2-1401 petition because when petitioner stipulated to the fact that the events at issue in 1989 took place in Cook County, Illinois, he provided a basis by which the trial court could exercise subject matter jurisdiction over the State's action and enter judgment against him.

¶ 24 In Illinois, jurisdiction is conferred by the constitution. *People v. Gilmore*, 63 Ill.2d 23 (1976). Pursuant to article VI, section 9, of our constitution, the circuit courts have jurisdiction over all justiciable matters. Ill. Const. 1970, art. VI §9. As applied in the context of criminal proceedings, the term "subject matter" jurisdiction means the power to hear and determine a given case. *People v. Davis*, 156 Ill.2d 149, 156 (1993). "Jurisdiction is a fundamental prerequisite to a valid prosecution and conviction. Where jurisdiction is lacking, any resulting judgment rendered is void and may be attacked either directly or indirectly at any time." *Id.* at 155.

¶ 25 In Illinois, criminal courts may only adjudicate matters, in which, as pertinent here, "the offense is committed either wholly or partially within the State…." 720 ILCS 5/1-5(a)(1)(West 2010). This is the same language that appeared in the statute in effect at the time petitioner committed his 1989 crimes (Ill. Rev. Stat. 1989 ch. 38, ¶1-5). To satisfy this jurisdictional threshold, something "jurisdictionally significant" with respect to the charged offense must occur within Illinois. *People v. Holt*, 91 Ill.2d 480, 492 (1982).

¶ 26 Petitioner contends the trial court in his 1989 crimes lacked subject matter jurisdiction because the crimes all occurred in Indiana. Putting aside the testimony that occurred at the 1995 trial, petitioner ignores the fact that at his sentencing for the 1989 crimes he stipulated all events occurred in Cook County, Illinois.

¶ 27 A stipulation is "an agreement between parties or their attorneys with respect to business before a court" (*People v. Buford*, 19 Ill.App.3d 766, 770 (1st Dist. 1974)), and courts look with favor upon stipulations because "they tend to promote disposition of cases, simplification of issues and the saving of expense to litigants." *People v. Coleman*, 301 Ill.App.3d 37, 48 (1st Dist. 1998).

¶ 28 "The law is well established that an accused may, by stipulation, waive the necessity of proof of all or part of the case which the People have alleged against him. Having done so, he cannot complain of the evidence which he has stipulated into the record." *People v. Pierce*, 387 Ill. 608, 612 (1944); see also *People v. Williams*, 192 Ill.2d 548, 571 (2000) ("A criminal defendant cannot complain on appeal of the introduction of evidence which he procures or invites"); *People v. Early*, 158 Ill.App.3d 232, 239 (2d Dist. 1987) (stipulations should be construed to give effect to the parties' intentions, and such stipulations are "binding and conclusive on the parties"). A party will not be relieved from a stipulation absent " 'a clear showing that the matter stipulated is untrue, and then only when the application is seasonably made.' " *Coleman*, 301 Ill.App.3d at 48 quoting *Brink v. Industrial Comm'n*, 36 Ill. 607, 609 (1938).

¶ 29 The record reflects that at his February 1990 sentencing hearing, petitioner, through his counsel, stipulated to the fact that events pertaining to the three indictments charged occurred in Cook County, Illinois. As to petitioner's sexual assault of P.S., it was stipulated that the sexual assault occurred at 10200 South Michigan. The sexual assaults of V.C. and N.D. were stipulated to have occurred in Cook County, Illinois. After counsels for the State and petitioner stipulated to these facts, the trial court stated:

¶ 30 [t]he Court finds that the record will reflect that the defendant knowingly understands the nature of the charges against him, the consequences thereof, and

> the possible penalties under the law. [The court] [f]urther finds that the defendant further understands and comprehends his rights under the law and wishes to waive them, plead guilty, and stipulate to the facts.

¶ 31 Thus, petitioner, through his counsel, stipulated to the fact that events related to the three indictments occurred within Cook County, Illinois. By stipulating to the fact, petitioner was admitting that something "jurisdictionally significant" with respect to the charged offenses occurred within Illinois. *Holt*, 91 Ill.2d at 492. Based on the stipulation that the three sexual assaults occurred within Cook County, the trial court had subject matter jurisdiction to enter judgment against him.

¶ 32 Since the trial court had subject matter jurisdiction, petitioner's contention that the judgments are void must be rejected. Because the February 1990 judgments are not void, petitioner should have brought his §2-1401 petition within 2 years of the entry of that judgment. See 735 ILCS 5/2-1401(c) (West 2010) (providing the petition must be filed not later than 2 years after the entry of the order or judgment). Since petitioner did not, the trial court was correct to reject his petition as not timely.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, the trial court's dismissal of petitioner's §2-1401 petition is affirmed.

¶ 35 Appeal affirmed.