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2015 IL App (3d) 140199-U

Order filed November 25, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois, |
| Plaintiff-Appellee, |) | |
| v. |) | Appeal Nos. 3-14-0199 and 3-14-0201 Circuit Nos. 05-CF-2340 and 06-CF-562 |
| DAVID L. WOODS, |) | Honorable |
| Defendant-Appellant. |) | Daniel J. Rozak, Judge, Presiding. |

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice McDade and Justice Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly dismissed defendant's petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)) where the petition lacked substantive merit.
- ¶ 2 Defendant, David L. Woods, appeals the trial court's dismissal with prejudice of his petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)). Specifically, the trial court held that it lacked

jurisdiction due to defendant's failure to properly serve the State with his petition. We affirm on the alternative ground that the petition lacked substantive merit.

¶ 3

FACTS

¶ 4

Defendant was charged with unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(2) (West 2004)). Subsequently, in a separate case, defendant was charged with aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006)).

¶ 5

Defendant entered a blind guilty plea to unlawful possession of a controlled substance with intent to deliver with an agreement from the State that no sentence would be entered until after the charges in defendant's second case had been resolved. Prior to accepting defendant's guilty plea, the trial court advised defendant that he faced a sentencing range of 4 to 15 years' imprisonment and a period of mandatory supervised release (MSR) of 2 years.

¶ 6

Defendant pled guilty in his second case to aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006)). In exchange, the State recommended a sentence of 12 years' imprisonment for aggravated battery with a firearm and 4 years' imprisonment for unlawful possession of a controlled substance with intent to deliver, to be served consecutively. Before accepting defendant's plea to aggravated battery with a firearm, the trial court advised defendant that he could receive a sentence of imprisonment from 6 to 30 years with 3 years' MSR. The trial court further advised defendant that the State was only agreeing to recommend a sentence and the court did not have to accept the State's recommendation.

¶ 7

At sentencing hearings held on August 27 and 28, 2007, defendant was sentenced to consecutive sentences of 12 years' imprisonment for aggravated battery with a firearm and 4 years' imprisonment for unlawful possession of a controlled substance with intent to deliver in accordance with the State's recommendation.

¶ 8 On January 31, 2014, defendant filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code. In his petition, defendant alleged that he would be unconstitutionally required to serve a longer sentence than that imposed by the trial court because the Department of Corrections added a 3-year MSR term to his sentence. Defendant further argued that MSR was a new law that did not exist when he was convicted. Defendant claimed that his sentence could be attacked at any time because the trial court lacked statutory authority to impose it. Defendant requested that his sentence be amended to nine years' imprisonment for aggravated battery with a firearm with three years' MSR. Defendant attached a memo to his petition entitled "Whether Illinois's Mandatory Supervised Release is Unconstitutional in its Current Application."

¶ 9 On February 6, 2014, the State filed a special limited appearance as to defendant's section 2-1401 petition. The State argued that because defendant improperly served the State by mail rather than serving the State with summons as required by Illinois Supreme Court Rules 105 (eff. Jan. 1, 1989) and 106 (eff. Aug. 1, 1985), the trial court lacked jurisdiction over the State.

¶ 10 That same day, the State filed a combined motion to dismiss defendant's section 2-1401 petition under section 2-301 of the Code (735 ILCS 5/2-301 (West 2014)) and Illinois Supreme Court Rule 103(b) (eff. July 1, 2007); section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)); and section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2014)). In its motion, the State argued that: (1) the trial court lacked jurisdiction because defendant failed to properly serve the State with summons; (2) defendant's section 2-1401 petition failed to state a cause of action and was insufficient as a matter of law; and (3) defendant's petition was untimely.

¶ 11 The next day, the trial court entered a written order granting the State's motion to dismiss. The trial court reasoned that it lacked jurisdiction because defendant failed to properly serve the

State pursuant to Supreme Court Rules 105 and 106. The order directed the clerk to notify defendant of the order within 10 days and of defendant's appeal rights under Illinois Supreme Court Rule 651(b) (eff. Feb 6, 2013).

¶ 12 On February 10, 2013, the clerk sent defendant a copy of the trial court's order along with a notice informing defendant that he had a right to appeal the order and that he had to file a notice of appeal within 30 days to preserve that right. Defendant filed a timely notice of appeal.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues that the trial court abused its discretion in dismissing defendant's section 2-1401 petition with prejudice for failing to properly serve the State where the State had actual notice of the petition and the dismissal order was entered only seven days after defendant's petition was filed. Because we find that the petition was substantively meritless, we do not reach defendant's procedural argument.

¶ 15 Ordinarily, a section 2-1401 petition must be brought within two years of entry of the judgment or order being challenged and a petition filed beyond the two-year period will not be considered. *People v. Harvey*, 196 Ill. 2d 444, 447 (2001); 735 ILCS 5/2-1401(c) (West 2014). However, a petitioner may seek relief beyond the two-year limitations period if the challenged judgment is void. *Harvey*, 196 Ill. 2d at 447. In ruling on whether the trial court's dismissal of defendant's section 2-1401 petition was proper, we may affirm on any basis supported by the record regardless of the trial court's actual reasoning and grounds. *People v. Harvey*, 379 Ill. App. 3d 518, 521 (2008). We review *de novo* the dismissal of a section 2-1401 petition where,

as here, the petition sets forth a purely legal challenge to a judgment. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 47.¹

¶ 16 In the instant case, relief under section 2-1401 is not available to defendant. Defendant's petition was filed more than six years after judgments of conviction were entered against defendant. Although defendant claimed in his petition that the trial court was without authority to impose his sentences, defendant's petition failed to establish that the challenged judgments were void.

¶ 17 Defendant's sentences of 12 years' imprisonment for aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006)) and 4 years' imprisonment for unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(2) (West 2004)) were within the applicable statutory sentencing ranges. 730 ILCS 5/5-8-1(a)(3) (West 2006); 730 ILCS 5/5-8-1(a)(4) (West 2004).

¶ 18 Additionally, defendant's three-year MSR term was authorized by statute. At the time defendant was sentenced, section 5-8-1 of the Unified Code of Corrections provided that "every sentence shall include as though written therein a term in addition to the term of imprisonment." 730 ILCS 5/5-8-1(d) (West 2004). In the case of consecutive sentences, the proper MSR term was the statutorily-prescribed term for the most serious offense. 730 ILCS 5/5-8-4(e)(2) (West

¹We note that, citing *People v. Wallace*, 405 Ill. App. 3d 984 (2010), defendant contends that the proper standard of review is abuse of discretion. However, the *Wallace* court applied the abuse of discretion standard to the trial court's choice of remedy for improper service of a section 2-1401 petition. *Id.* at 988. In this case, our review is not limited to the question of whether the trial court imposed the proper remedy for the service defect because the State also moved to dismiss the petition on grounds of legal insufficiency and untimeliness.

2004). The most serious offense of which defendant was convicted, aggravated battery with a firearm, was a Class X felony. 720 ILCS 5/12-4.2(b) (West 2006). Consequently, the proper MSR term was three years. 730 ILCS 5/5-8-1(d)(1) (West 2006).

¶ 19 Having found that defendant's sentence of imprisonment and MSR term were authorized by statute and, consequently, defendant's section 2-1401 petition is substantively meritless, we reject defendant's argument that the matter should be remanded for further proceedings. Citing *Wallace*, 405 Ill. App. 3d at 986-88, defendant argues that the trial court abused its discretion in dismissing his petition with prejudice for improper service only seven days after it was filed where the State had actual notice of the petition. In *Wallace*, unlike in the instant case, the State moved to dismiss the defendant's section 2-1401 petition *only* on grounds of improper service. *Id.* at 985. Because defendant's petition was substantively meritless and the State moved to dismiss on substantive grounds as well as for improper service, we affirm the trial court's dismissal of the petition.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Will County is affirmed.

¶ 22 Affirmed.