

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).

2015 IL App (4th) 130779-U

NO. 4-13-0779

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 13, 2015

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
TORY S. MOORE,)	No. 97CF1660
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted the office of the State Appellate Defender's motion to withdraw as appellate counsel and affirmed the trial court's dismissal of defendant's petition for relief from judgment as without merit and untimely.

¶ 2 In April 2013, defendant, Tory S. Moore, filed a petition for relief from judgment, arguing (1) the judgment convicting him of first degree murder was void for lack of jurisdiction, and (2) various constitutional errors were committed during trial and sentencing. After a hearing, the trial court dismissed the petition on the State's motion. Defendant filed a notice of appeal, and the court appointed the office of the State Appellate Defender (OSAD) to represent him. On appeal, OSAD moves to withdraw its representation of defendant, contending any request for review would be without merit. We grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 3

I. BACKGROUND

¶ 4

We set forth the detailed factual background of defendant's criminal case in *People v. Moore*, 4-99-0451 (October 1, 2001) (unpublished order under Supreme Court Rule 23). In sum, in 1999, defendant was convicted of first degree murder after he and two co-defendants kidnapped the victim and two others at gunpoint. Defendant and the co-defendants drove the victims around in a vehicle, taunting and threatening them before stopping near a cornfield. Defendant lined up the three victims in front of the vehicle and shot one in the head and shot him again after he had fallen to the ground. The other two victims fled. The trial court, finding the offense was exceptionally brutal or heinous, sentenced defendant to natural life in prison.

¶ 5

On direct appeal, defendant argued (1) he was denied a fair trial by the presentation of evidence of gang affiliation, (2) the prosecutor made prejudicial comments during closing argument, and (3) several sentence-related issues. This court affirmed defendant's conviction and sentence. *Moore*, No. 4-99-0451 at 9.

¶ 6

In 2006, defendant filed a postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2004)), arguing he was denied a fair trial when (1) the jury did not make an exceptionally-brutal-or-heinous finding; and (2) the trial court vacated the felony murder count which, in effect, he claimed, resulted in no verdict for the underlying felonies that formed a basis for his first-degree-murder conviction. The trial court summarily dismissed the petition as frivolous and patently without merit. Defendant appealed and this court affirmed the dismissal. *People v. Moore*, 4-06-0899 (April 30, 2008) (unpublished order under Supreme Court Rule 23).

¶ 7 In April 2013, defendant filed a petition for relief from judgment, claiming his conviction and sentence were void. The State filed a motion to dismiss, arguing the petition was untimely, since it was filed 14 years after the judgment, and defendant raised no meritorious allegations that his conviction or sentence was void. After a hearing, at which defendant was present, the trial court granted the State's motion and dismissed defendant's petition. Defendant appealed and the court appointed OSAD as counsel on appeal.

¶ 8 OSAD filed a motion to withdraw as appellate counsel, contending the record presents no meritorious issues for appellate review. Defendant received a copy of OSAD's motion and memorandum in support. On this court's own motion, we granted defendant leave to file additional points and authorities, which he has done. The State filed a brief as well.

¶ 9 We have considered the record and we conclude, as did OSAD, no meritorious issues can be raised as to the dismissal of defendant's petition for relief from judgment.

¶ 10 II. ANALYSIS

¶ 11 Petitions for relief from judgment are governed by section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (2012)), which establishes a statutory procedure that allows for the vacatur of a final judgment older than 30 days. While section 2-1401 is a civil remedy, Illinois courts also apply it to criminal cases. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). A petition for relief from judgment brought under section 2-1401 must be filed no later than two years after the entry of the order or judgment. 735 ILCS 5/2-1401(c) (West 2012). However, the two-year statute of limitations does not apply where the judgment being challenged is void. *People v. Harvey*, 196 Ill. 2d 444, 447 (2001). In this case, defendant is claiming the judgment is void and the two-year statute of limitations does not apply.

¶ 12 Generally, to obtain relief under section 2-1401, a petitioner must prove by a preponderance of the evidence "a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *Vincent*, 226 Ill. 2d at 7-8. "However, where, as in this case, a petitioner seeks to vacate a final judgment as being void (735 ILCS 5/2-1401(f) (West 2002)), the allegations of voidness 'substitute[] for and negate[] the need to allege a meritorious defense and due diligence.' " *Vincent*, 226 Ill. 2d at 7 n. 2 (quoting *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)).

¶ 13 When the trial court either summarily dismisses the section 2-1401 petition or rules on the petition based on the pleadings alone without an evidentiary hearing, the reviewing court applies a *de novo* standard of review. *Vincent*, 226 Ill. 2d at 14-16. Here, no evidence was presented at the August 2013 hearing, and thus we review the matter *de novo*.

¶ 14 Defendant first claims his conviction is void because the statute under which he was convicted is unconstitutional because Public Act 84-1450 is an *ex post facto* law when applied to him. Public Act 84-1450 renamed the offense of murder to first degree murder and essentially renamed the offense of voluntary manslaughter to second degree murder. In 1989, the supreme court held this Public Act violative of *ex post facto* law when applied retroactively. The murder for which defendant was convicted did not occur until 1997, so no *ex post facto* violation occurred as applied to defendant's case.

¶ 15 Defendant also claims Public Act 89-428, which amended the murder statute, was held unconstitutional. Therefore, he contends, his conviction is void. See *Johnson v. Edgar*, 176 Ill. 2d 499, 523 (1997). This Public Act has no bearing on defendant's conviction, as it amended

the murder statute to include predatory criminal sexual assault of a child as a predicate offense for felony murder. Public Act 89-428 had no bearing on defendant's conviction.

¶ 16 Further, defendant claims his natural life sentence was void because the supreme court found the statute authorizing the sentence unconstitutional. See *People v. Wooters*, 188 Ill. 2d 500, 520 (1999). The unconstitutionality of the natural-life-in-prison statute related only to those individuals convicted of murdering a child less than 12 years old, not to defendant.

¶ 17 Defendant's claim that his natural life sentence violated his due-process rights because the judge, not the jury, found the murder to be brutal and heinous. This court addressed this issue on the merits in defendant's direct appeal, barring further consideration under the doctrine of *res judicata*. See *Moore*, No. 4-99-0451 at 4-5.

¶ 18 Defendant also claims his conviction is void because the allegations set forth in the charging instrument were not sufficiently detailed so as to allow him the opportunity to prepare a defense. Our review of the record indicates each of the five counts of murder for which defendant was charged, fully comply with the requirements set forth in section 111-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/111-3 (West 2012)). The counts each state the name of the offense, the applicable statutory provision, the nature and elements of the offense, the date, and the name of the accused as required by statute. This claim is likewise without merit.

¶ 19 Finally, defendant argues the information was void because the prosecutor did not sign the charging document in violation of section 111-3(b) of the Code. See 725 ILCS 5/111-3(b) (West 2012)). The information included charged offenses against co-defendants as well as defendant. In the 10-count document, the prosecutor, a witness, and a notary public electronically signed count 10. Pursuant to the supreme court's holding in *Cox*, the prosecutor's

signature at the end of the 10-count document is sufficient to constitute a signature for the entire information. See *People v. Cox*, 53 Ill. 2d 101, 107 (1972) ("the trial judge properly treated the three pages as three counts of a single information and that the signature and verification following the third count was a signature and verification of the single three-count information"). No reasonable argument can be made that the information in this case was void.

¶ 20 We agree with OSAD's assessment of the merits, or lack thereof, of the allegations set forth in defendant's petition for relief from judgment. Further, we find no error as it relates to the trial court's acceptance of the State's motion to dismiss filed two days late from the time ordered by the trial court. Defendant attended the hearing on the State's motion to dismiss in person and was afforded the opportunity to be heard. The court has the discretion whether to accept late filings. *People v. Cortez*, 338 Ill. App. 3d 122, 128 (2003). Accordingly, upon our review of the record and OSAD's motion, we affirm the trial court's dismissal of defendant's petition for relief from judgment and conclude, as did OSAD, the record presents no meritorious issues for review.

¶ 21 III. CONCLUSION

¶ 22 We grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 23 Affirmed.