

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) 131106-U

NO. 4-13-1106

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 9, 2015

Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
STEVEN A. BRADLEY,)	No. 04CF1956
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's section 2-1401 motion is untimely and the jury's verdicts were not inconsistent.

¶ 2 In October 2004, the State charged defendant, Steven A. Bradley, with criminal sexual assault (count I) (720 ILCS 5/12-13(a)(2) (West 2004)) for committing an act of sexual penetration without consent. In February 2005, the State charged him, on the same facts, with criminal sexual assault (count II) (720 ILCS 5/12-13(a)(1) (West 2004)) for committing an act of sexual penetration through the use of force. In February 2005, a jury found defendant guilty on count I and not guilty on count II. In March 2005, the trial court sentenced defendant to 15 years in prison. In October 2013, he filed a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)), alleging his judgment was void for lack of jurisdiction and a denial of due process from legally inconsistent jury verdicts. In November 2013, the State filed a motion to dismiss, which the trial court granted. This appeal

followed. We affirm.

¶ 3

I. BACKGROUND

¶ 4

In *People v. Bradley*, 2013 IL App (4th) 110166-U (unpublished order under Supreme Court Rule 23), this court detailed this case's factual and procedural history at length. On October 20, 2004, the victim, N.H., fell asleep on her couch and awoke to defendant on top of her with his penis in her vagina. She pushed defendant off her and contacted a friend and the police. She denied consenting to the act. She denied biting defendant's lip or digging her fingernails into defendant.

¶ 5

Police officers spoke with defendant, who admitted having sexual intercourse with N.H. Defendant contended the intercourse was consensual and attempted to prove N.H. enjoyed the act by showing officers where N.H. bit defendant and left scratch marks. The officers did not see any markings on defendant.

¶ 6

At trial, the jury found defendant guilty of criminal sexual assault without consent (count I) and acquitted defendant of criminal sexual assault by force (count II). The trial court sentenced defendant to 15 years in prison. This court affirmed on direct appeal. *People v. Bradley*, No. 4-05-0405 (Sept. 11, 2006 (unpublished order under Supreme Court Rule 23)). In May 2007, defendant filed a *pro se* postconviction petition. In June 2007, the trial court entered a first-stage dismissal order, concluding the petition was frivolous and without merit. This court affirmed. *People v. Bradley*, No. 4-07-0631 (June 6, 2008 (unpublished order under Supreme Court Rule 23)). In January 2011, defendant filed a motion to allow deoxyribonucleic acid (DNA) testing, which the court denied as identity was not an issue. This court affirmed. *Bradley*, 2013 IL App (4th) 110166-U.

¶ 7

On October 28, 2013, defendant filed a *pro se* section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)). In it, he alleged (1) the trial court lacked the

statutory authority to convict him of sexual assault without consent and (2) a violation of due process because the jury returned inconsistent verdicts. He suggested raising the affirmative defense of consent required the State to disprove consent and precluded the court from instructing the jury on sexual assault without consent if consent is raised as a defense. The jury's not guilty finding on sexual assault by force, he argued, was inconsistent with the jury's finding of guilt on sexual assault without consent.

¶ 8 In November 2015, the State filed a motion to dismiss, arguing (1) defendant's claims were not properly presented, (2) his claims were insufficient at law, (3) his claim was untimely, and (4) failure to exercise due diligence. The trial court granted the State's motion to dismiss. It specifically found the defendant's claims were untimely, improperly brought, and insufficient at law in arguing inconsistent jury verdicts. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant argues (1) the trial court erred in dismissing his petition as untimely because it was a void judgment and (2) defendant was denied due process where the jury returned inconsistent verdicts. We disagree and affirm the trial court's dismissal.

¶ 11 A. Void Judgment

¶ 12 Review of a motion to dismiss a section 2-1401 petition is *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18, 871 N.E.2d 17, 28 (2007). Under section 2-1401, a defendant may vacate a judgment over 30 days after its entry if he can prove evidence or a claim that would have prevented entry of the judgment in the original case. *Vincent*, 226 Ill. 2d at 7-8, 871 N.E.2d at 22. A filing must be made within two years unless relief is sought from a void judgment. 735 ILCS 5/2-1401(c), (f) (West 2012); *People v. Gosier*, 205 Ill. 2d 198, 206, 792 N.E.2d 1266, 1271 (2001). Judgment was entered in 2005. Defendant filed his section 2-1401 petition in 2013. The petition is six years past the two-year limitation. The only argument defendant can

make under section 2-1401 is a void judgment argument. Defendant's argument is without merit. Defendant argues no new information to serve as a valid basis for overturning his conviction under section 2-1401.

¶ 13 Defendant's basis for arguing a void judgment is inconsistent jury verdicts. A void judgment results from a court decision in which the court lacks either personal or subject-matter jurisdiction. *People v. Castleberry*, 2015 IL 116916, ¶¶ 11-12; see also *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 32, 32 N.E.3d 553. Both parties cite *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 827 N.E.2d 422 (2005), to argue the court's "inherent power" to enter judgments within its jurisdiction. This refers to a court's jurisdiction to enter judgments based on the circumstances defined in the statute. *LVNV Funding, LLC*, 2015 IL 116129, ¶ 24, 32 N.E.3d 553. The "inherent power" interpretation, however, was recently rejected by the Illinois Supreme Court and limited only to cases of administrative review, where jurisdiction is given by statute. *Castleberry*, 2015 IL 116916, ¶¶ 16-17. Neither personal nor subject-matter jurisdiction are challenged in this case. The judgment is not void if the court holds both these types of jurisdiction. Defendant's judgment is valid and his section 2-1401 claim is untimely. The trial court properly dismissed it.

¶ 14 B. Due Process and Inconsistent Verdicts

¶ 15 Defendant's second argument is a denial of due process because the jury returned inconsistent verdicts based on its interpretation of consent. We conclude the verdicts are not legally inconsistent. The jury was instructed on sexual assault for count I where (1) sexual penetration occurred and (2) the victim was unable to give consent. Then it was instructed on sexual assault for count II where there was (1) penetration, (2) lack of consent, and (3) the use of force. The jury's acquittal on count II could be based on any number of factors other than a legally inconsistent interpretation of consent.

¶ 16 Even if the interpretation of consent was the basis for the different verdicts, it is still not subject to challenge. A conviction cannot be challenged on the sole basis of legal inconsistency with an acquittal of another charge. *People v. Jones*, 207 Ill. 2d 122, 133-34, 797 N.E.2d 640, 647 (2003) (basing its decision on *United States v. Powell*, 469 U.S. 57 (1984)). Permitting a challenge of inconsistent verdicts requires speculation or an inquiry into jury deliberations. *Powell*, 469 U.S. at 66-67. Courts will not engage in these endeavors. *Powell*, 469 U.S. at 67. Defendant's challenge to the verdicts is based entirely on speculation. Regardless of the jury's reasoning, this court will not inquire into the jury's deliberations or disturb its conclusion.

¶ 17 III. CONCLUSION

¶ 18 Defendant's claim of inconsistent verdicts is without merit. The trial court's decision was properly entered and the defendant's section 2-1401 petition was untimely. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 19 Affirmed.