

NOTICE
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2015 IL App (5th) 140281-U

NO. 5-14-0281

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | St. Clair County. |
| |) | |
| v. |) | No. 03-CF-1744 |
| |) | |
| EDWARD S. PHILLIPS, |) | Honorable |
| |) | Jan V. Fiss, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Where the defendant's claims are untimely and barred by *res judicata*, the judgment of the circuit court is affirmed.

¶ 2 The defendant, Edward S. Phillips, appeals the dismissal of his postjudgment petition filed pursuant to section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2012)). For the reasons that follow, we affirm.

¶ 3 **BACKGROUND**

¶ 4 On May 29, 2007, the defendant was convicted of first-degree murder and was sentenced to 55 years in prison. This court affirmed the defendant's conviction. *People v. Phillips*, 2011 IL App (5th) 070416-U. The defendant has filed multiple pleadings and

motions in the meantime, but we discuss only the petition relevant to this appeal. On October 12, 2012, the defendant filed a petition for postjudgment relief pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)). On April 9, 2014, the State filed a combined motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2012)). The circuit court granted the State's combined motion to dismiss on May 28, 2014. The defendant appeals.

¶ 5

ANALYSIS

¶ 6 We review the dismissal of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). A section 2-1401 petition is the forum in which a defendant may seek to correct errors of fact occurring in a criminal prosecution that were unknown to the defendant and the court at the time the judgment was entered, which, if known at the time of judgment, would have prevented the rendition of the judgment. *Id.* at 7-8. The final judgment in a criminal case is the sentencing. *People v. Jake*, 2011 IL App (4th) 090779,

¶ 24. To obtain relief pursuant to section 2-1401 of the Code, a defendant must affirmatively set forth specific factual allegations that support the existence of a meritorious claim or defense, due diligence in presenting the claim or defense to the court in the original action, and due diligence in filing the section 2-1401 petition. *People v. Pinkonsly*, 207 Ill. 2d 555, 565 (2003). A petitioner has two years to file a postjudgment petition unless the judgment of the circuit court is void (735 ILCS 5/2-1401(f) (West 2010)). A judgment is void when the circuit court lacked the inherent power to render the judgment or sentence or where the court lacked both personal and subject matter

jurisdiction. *People v. Raczkowski*, 359 Ill. App. 3d 494, 496-97 (2005). If the judgment is void, a defendant may attack the judgment at any time. *Id.*

¶ 7 Issues that were raised and decided on direct appeal are barred by *res judicata*. *People v. Williams*, 209 Ill. 2d 227, 233 (2004).

¶ 8 In his section 2-1401 petition, the defendant first argued that the circuit court was without power to render judgment because his right to a speedy trial was violated. In conjunction with his first argument, the defendant also argued that his rights were violated when there was a delay in arraigning him. This court considered these issues fully on direct appeal. See *Phillips*, 2011 IL App (5th) 070416-U, ¶¶ 141-143. As such, these arguments are now barred by *res judicata*. *Williams*, 209 Ill. 2d at 233. Even if these arguments were not barred by *res judicata*, the defendant has failed to show that the judgment of the court was void as a result of these alleged errors. A judgment is void if the court lacked jurisdiction or the inherent power to render the judgment. *Raczkowski*, 359 Ill. App. 3d at 496-97. The violation of the speedy trial statute does not strip a court of jurisdiction. *People v. Pearson*, 88 Ill. 2d 210, 216 (1981). The defendant personally appeared before the court, which established the court's personal jurisdiction over the defendant, and the circuit courts have subject-matter jurisdiction over all justiciable matters. See *People v. Woodall*, 333 Ill. App. 3d 1146, 1156 (2002). The court, therefore, had the power and jurisdiction to render the judgment and its judgment is not void.

¶ 9 Next, the defendant argued that he was denied due process when the circuit court refused to grant funding for expert witnesses and investigative services. Again, the

defendant made this exact argument on direct appeal, and this court fully considered and decided the issue on direct appeal. *People v. Phillips*, 2011 IL App (5th) 070416-U, ¶¶ 147-158. Therefore, this issue, too, is barred by *res judicata*.

¶ 10 The defendant also argued that the circuit court's order was void because the court allowed testimony related to an order of protection. Specifically, the defendant argued that such testimony was "collateral crimes evidence." The defendant raised this issue on direct appeal, and this court considered the issue at that time. *People v. Phillips*, 2011 IL App (5th) 070416-U, ¶¶ 190-202. Also, the defendant admitted that he raised the issue of collateral crimes in a posttrial motion. This issue is thus barred by *res judicata* because it was wholly dispensed with on direct appeal, and the issue is not subject to relief under section 2-1401 because the issue was known to the defendant at the time of judgment.

¶ 11 The defendant next argued that he was denied his constitutional right to confrontation because the State used a videotaped deposition of a witness at trial. This court considered the issue on direct appeal (see *People v. Phillips*, 2011 IL App (5th) 070416-U, ¶¶ 203-213), and thus it is barred by *res judicata*. Furthermore, this information was known to the defendant at the time the judgment was rendered, and therefore does not qualify for section 2-1401 relief.

¶ 12 Next, the defendant argued that the circuit court acted arbitrarily when it failed to conduct an inquiry into the "inappropriate contact" between the court personnel and the jury, and thus, his jury was not impartial. The defendant argued that this alleged error rendered the judgment void. As discussed above, the court had the jurisdiction to render the defendant's judgment when the State filed charges against the defendant and when the

defendant appeared before the court. Also, this court addressed and rejected this argument on direct appeal, and it is therefore barred by *res judicata*. *People v. Phillips*, 2011 IL App (5th) 070416-U, ¶¶ 222-227.

¶ 13 Finally, the defendant argued that his rights were violated by the nondisclosure of illegally obtained, incriminating statements; namely, the defendant argues, that he was questioned without first receiving *Miranda* warnings. See *Miranda v. Arizona*, 384 U.S. 436 (1966). The defendant argued that he was questioned on the way to his attorney's office, and then, once at his attorney's office, he was given *Miranda* warnings and was asked to repeat what he had said on the drive to his attorney's office. This court found on direct appeal that the defendant was not questioned on the way to his attorney's office. *People v. Phillips*, 2011 IL App (5th) 070416-U, ¶ 187. In other words, this court has already considered this argument and set of facts on direct appeal, and this argument is barred by *res judicata* as a result.

¶ 14 The defendant's seven arguments are identical to the arguments he made on direct appeal. See *People v. Phillips*, 2011 IL App (5th) 070416-U. Further, the defendant has failed to assert any factual allegation that would circumvent the two-year filing requirement for his section 2-1401 petition.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 17 Affirmed.