2015 IL App (5th) 150113-U

NO. 5-15-0113

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Johnson County.
	)	
v.	)	No. 99-CF-95
	)	
ERNST BRUNY, JR.,	)	Honorable
	)	James R. Williamson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Schwarm and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly denied the defendant's petition for relief from judgment.

¶ 2 The defendant, Ernst Bruny, Jr., appeals *pro se* the March 2, 2015, denial of his petition for relief from judgment filed pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)). For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On September 29, 1999, Bruny was charged with numerous offenses, including first-degree murder. On that same date, the State filed notice of its intent to seek the death penalty. On July 11, 2000, the defendant pled guilty to first-degree murder in exchange for a sentence of natural life and the dismissal of all other charges. The agreed-upon sentence of natural-life imprisonment was based upon a stipulated finding that the victim's murder was accompanied by exceptionally brutal and heinous behavior indicative of wanton cruelty (730 ILCS 5/5-8-1(a)(1)(b) (West 1998)).

¶ 5 On December 4, 2000, the defendant filed a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 1998)), arguing that his natural-life sentence should be vacated because the aggravating factor was (1) not found proven beyond a reasonable doubt by a jury, as required by *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and (2) not charged in the indictment. The circuit court dismissed his petition. This court affirmed, holding that a defendant who pleads guilty cannot raise an *Apprendi* challenge and that he forfeited his charging-instrument claim by not raising it in the trial court. *People v. Bruny*, No. 5-04-0130 (2005) (unpublished order under Supreme Court Rule 23).

¶ 6 Some nine years later, on September 19, 2014, the defendant filed a petition for relief from judgment under section 2-1401(f) of the Code (735 ILCS 5/2-1401(f) (West 2012)) alleging again that his natural-life sentence was void, citing *Alleyne v. United States*, 570 U.S. ___, 133 S. Ct. 2151 (2013). The petition was denied by the trial court. The defendant filed a timely notice of appeal.

¶ 7 ANALYSIS

¶ 8 Where there are no disputed facts, we review the denial of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). Section 2-1401 establishes a comprehensive, statutory procedure which allows a defendant to challenge final orders and judgments based upon 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. *Vincent*, 226 Ill. 2d at 7-8. 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). Generally, a petitioner has two years to file a postjudgment petition (735 ILCS 5/2-1401(c) (West 2010)) 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.*

¶ 9 Issues previously raised and decided are barred by *res judicata*, and issues that could have been raised, but were not, are waived. *People v. Williams*, 209 Ill. 2d 227 (2004).

¶ 10 The defendant raises the following arguments on appeal: (1) the trial court erred in imposing a natural-life sentence based upon the finding that the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty because this enhancing factor was not proven beyond a reasonable doubt to the trier of fact; (2) increasing the maximum penalty based upon a factor not charged in the indictment is "insufficient, prejudicial, defective, and unconstitutional"; (3) "Petitioner evokes the Supremacy Clause of the U.S. Constitution as being germane to the safe-guarding of his Federal Rights"; and (4) he should receive a sentence closer to the statutory minimum of 20 years based upon the trial court's failure to take any rehabilitative potential into consideration in violation of the constitutionally mandated objective of rehabilitation. Each will be discussed individually below.

¶ 11 We begin with the defendant's third argument−that the supremacy clause of the United States is "germane" to his claims. Illinois Supreme Court Rule 341(h)(7) states that the appellant's brief shall contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). "Bare assertions that are unsupported by any citation of authority do not merit consideration on appeal." *People v. Johnson*, 2015 IL App (2d) 140388, ¶ 7. In direct violation of Rule 341(h)(7), the defendant's third argument is simply a bare allegation, unsupported with coherent argument, analysis, or by clear citation to authority. Consequently, it is waived and we will not address it in this order.

¶ 12 The defendant's principal argument is that his natural-life sentence is void because the finding upon which it was based−that the murder was accompanied by exceptionally brutal and heinous behavior indicative of wanton cruelty−was not proved beyond a reasonable doubt to a trier of fact. In support of his argument, the defendant cites *Alleyne v. United States*, 570 U.S. __, 133 S. Ct. 2151 (2013), wherein the Supreme Court extended the rule enunciated in *Apprendi*. In *Apprendi*, the Supreme Court held that other than the fact of a prior conviction, any fact which increases the prescribed range of penalties to which a defendant is exposed is an element of the crime which must be proved to a jury beyond a reasonable doubt. *Apprendi*, 530 U.S. at 490. In *Alleyne*, the Supreme Court held that any fact which increases the mandatory minimum sentence is likewise an element of the offense that must be proved to the jury. *Alleyne*, 570 U.S. at ____, 133 S. Ct. at 2155. As noted above, this court rejected the defendant's *Apprendi* argument in his previous appeal, holding that by pleading guilty, the defendant relieved the State of the burden of proving any element of the offense. *Bruny*, No. 5-04-0130, order at 4-5 (citing *People v. Jackson*, 199 Ill. 2d 286 (2002); *Hill v. Cowan*, 202 Ill. 2d 151 (2002)). Nothing in *Alleyne* abrogated the rule that a defendant who pleads guilty relieves the State of proving any element of the offense. Moreover, neither *Apprendi* nor *Alleyne* applies retroactively to cases on collateral review. *People v. De La Paz*, 204 Ill. 2d 426, 438 (2003); *People v. Johnson*, 2015 IL App (2d) 140388, ¶ 8.

¶ 13 The defendant also relies on *Alleyne* to support his argument that "the Illinois Procedure [*sic*] authorizing an alleged fact to be used to increase the maximum penalty, without charging it in the indictment is insufficient, prejudicial, and unconstitutional."

This is merely a regurgitation of the indictment argument he previously raised and which we rejected. As we stated in our prior decision, "[w]here the defendant does not object until an appeal to the failure of the charging instrument to state the aggravating factors, this court will not consider the issue, because the defendant's substantial rights are not involved and the fairness, integrity, and public reputation of the judicial system are not affected by the omission." *Bruny*, No. 5-04-0130, order at 6 (citing *United States v. Cotton*, 535 U.S. 625 (2002); *People v. Altom*, 338 Ill. App. 3d 355, 361 (2003)). Consequently, it is barred by *res judicata*.

¶ 14 However, even if the defendant's "indictment argument" was not barred by *res judicata*, the defendant relies upon *Alleyne*. As previously noted, *Alleyne* and *Apprendi* do not apply to guilty pleas, and neither of the holdings in *Alleyne* or *Apprendi* is retroactive. *De La Paz*, 204 Ill. 2d at 439.

¶ 15 The defendant's final argument is that his sentence should be reduced to something closer to the statutory minimum of 20 years' imprisonment because the circuit court failed to consider his rehabilitative potential. This argument is forfeited because the defendant did not raise it in his prior appeal and because a guilty plea waives all nonjurisdictional errors. See, *e.g.*, *People v. Townsell*, 209 Ill. 2d 543, 545 (2004).

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, the judgment of the circuit court of Johnson County is affirmed.

¶ 18 Affirmed.