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FIFTH DIVISION
February 19, 2016

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 95 C 440973
)	
DAMION JONES,)	The Honorable
)	Paula M. Daleo,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

ORDER

¶1 *HELD:* The trial court properly dismissed defendant's freestanding petition to vacate an 18-year old judgment as void where he failed to file the petition under the proper statutory vehicle in order to invoke the trial court's jurisdiction.

¶2 Defendant, Damion¹ Jones, appeals the dismissal of his "petition to vacate void judgment" for lack of jurisdiction. Defendant contends that, because the trial court considered

¹On the notice of appeal and in the appellate briefs, defendant's name is spelled "Damion." Defendant's name, however, is actually spelled "Dameon" as reflected in other pleadings in the record. We continue the use of "Damion" to maintain consistency with the notice of appeal and appellate briefs.

¶7 On February 5, 2014, the State filed its motion to dismiss, arguing that defendant's petition failed to cite any authority under which he was entitled to file the petition. The trial court advised defense counsel that it was inclined to deny the petition to vacate and instructed counsel to file a section 2-1401 petition. More specifically, the trial court advised defense counsel that he needed to cite section 2-1401(f) to invoke the court's jurisdiction where it "basically gives you the out of having to file it within 2 years if you are claiming that it's a void judgment." Defense counsel disagreed, instead requesting a hearing date to respond to the State's motion to dismiss.

¶8 On March 28, 2014, a hearing was held on the State's motion to dismiss. The State argued that defendant "failed to allege a proper procedural vehicle to bring the matter before the court," and, therefore, the court lacked jurisdiction to consider the merits of the petition. In response, defense counsel argued that a void judgment could be attacked at any time. The State inquired whether defense counsel was invoking section 2-1401 as a proper procedural vehicle to grant the trial court jurisdiction despite failing to cite the statute. Defense counsel maintained he did not have to cite "1401." The trial court opined:

"I don't want you to make any argument that you don't want to make. You stand before me, and I have told you before, that the proper vehicle for this is 1401(f). And you have a legitimate petition to file. You refuse to do it and instead you are presenting me with this petition to vacate more than 30 days after the judgment was filed. That's your motion. You persist in it. The State has responded by giving you an alternative way to file, which I also gave you the last time this case was up. And you want to stand—."

Defense counsel again maintained that he need not rely upon section 2-1401 for defendant's petition. Defense counsel argued that section 2-1401(f) "isn't the only way to attack a void judgment." In response, the trial court advised:

"There is a correct procedural vehicle to file to get his judgment dismissed. If I grant jurisdiction under a motion to vacate a judgment and they take me up on appeal [they will say] I don't have jurisdiction. And you have an alternative to plea. Why you don't want to just say you are pleading your case under the correct procedural section which gives you relief from what you are trying to do here is beyond me."

After granting the State's motion to dismiss, the trial court stated: "And so the record is perfectly clear, I have again suggested to the public defender as the State has, that he easily, easily, without putting his client through two years of appeal, has a viable statutory procedure in which to proceed where he can seek and most likely get the relief he is asking for."

¶9 This timely appeal followed.

¶10 ANALYSIS

¶11 Defendant contends the trial court erred in dismissing his petition to vacate a void judgment for lack of jurisdiction. Defendant concedes that his trial counsel was incorrect in insisting that his freestanding petition was a viable method to challenge his void conviction. Defendant, however, maintains that the trial court construed his freestanding petition as a section 2-1401 petition for relief from judgment and, therefore, had jurisdiction to consider the merits of the petition. The State responds that, although the trial court advised defendant that his voidness challenge should be refiled in a section 2-1401 petition, the court never construed or recharacterized the freestanding petition as a section 2-1401 petition. As a result, the State posits that the trial court never gained jurisdiction over the freestanding petition.

¶12 We review a trial court's dismissal of a case for lack of jurisdiction solely based on the pleadings *de novo*. *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 34.

¶13 The law is clear that, although a void judgment may be attacked at any time, jurisdiction first must be established in the court in order to consider the merits of the voidness claim. See *People v. Flowers*, 208 Ill. 2d 291, 306-07 (2003); *People v. Rodriguez*, 355 Ill. App. 3d 290, 293 (2005). The parties agree that a court *can* designate a freestanding motion as a section 2-1401 petition or a postconviction petition, thereby providing jurisdiction to consider the underlying merits. *Id.*; *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 100-05 (2002) (construing an order granting a motion to vacate a void judgment, which the trial court had not explicitly recharacterized, as the granting of a section 2-1401 petition thus allowing the reviewing court to assume appellate jurisdiction). However, defendant has not cited any authority demonstrating that a trial court or this court *must* recharacterize a freestanding motion into an appropriate pleading. Rather, the cases cited by defendant, namely, *Padilla v. Vasquez*, 223 Ill. App. 3d 1018, 1023 (1991), and *Sarkissian*, involved untimely freestanding postjudgment motions that were initially considered by the trial court on the merits and, therefore, had to be reviewed as section 2-1401 petitions by the appellate court as the only appropriate vehicle to attack a final judgment more than 30 days after its entry under those circumstances.

¶14 Nevertheless, defendant contends that, in this case, the trial court *did* recharacterize his freestanding petition into a section 2-1401 petition. We find that the record does not support defendant's position. Here, 18 years after pleading guilty and 16 years after completing his 24-month probation term, defendant filed a *pro se* motion to vacate his conviction without citing any

supporting authority. The trial court appointed counsel, who then filed a "petition to vacate void judgment," again without citing any statutory authority for the relief sought. The State subsequently made an oral motion to dismiss, arguing that the petition failed to cite section 2-1401(f), which was the only appropriate statutory authority that supported defendant's claim. The State also filed a written motion to dismiss on the same basis. The trial court advised defense counsel, both when the State made its oral motion and during the subsequent hearing for the State's written dismissal motion, that his petition lacked the proper authority to initiate the court's jurisdiction. The trial court explicitly urged defense counsel to refile the petition pursuant to section 2-1401(f).

¶15 Contrary to defendant's argument, the record reveals that the trial court never recharacterized or considered the freestanding petition as a section 2-1401 petition. Defendant latches on to the trial court's statement that "[I] do not believe that the 1401 petition to vacate a void judgment based on the finding that the statute was unconstitutional limits him to a two year period" to insist that the trial court construed his petition as a section 2-1401 petition. The statement, however, is misconstrued and taken out of context. A review of the record reveals that the statement was made in response to defense counsel's argument that defendant was time-barred from filing a section 2-1401 petition. In the challenged statement, the trial court was simply explaining that a petition filed pursuant to section 2-1401(f) would be timely. The trial court was referring to a subsequent, properly filed section 2-1401 petition; it was not addressing defendant's freestanding petition to vacate a void judgment as a section 2-1401 petition for relief from judgment. We, therefore, conclude that the trial court did not err in dismissing defendant's freestanding petition for lack of jurisdiction. See *In re Commitment of Phillips*, 367 Ill. App. 3d 1036, 1041 (2006) (where the appellate court held it would not consider the defendant's two

freestanding motions as section 2-1401 petitions because there was nothing in the record or the circuit court's dismissal order indicating the lower court considered the motions as 2-1401 petitions and where the defense attorney could have made minor changes to the motions' titles if he intended them to be considered section 2-1401 petitions).

¶16 In the alternative, defendant contends this court should *sua sponte* vacate his 1995 UUI conviction because the statute under which he was convicted has been deemed void. In support, defendant cites *People v. Arna*, 168 Ill. 2d 107 (1995),² and *People v. Harper*, 345 Ill. App. 3d 276, 284 (2004). While we agree that "[a] void order may be attacked at any time or in any court," (*People v. Thompson*, 209 Ill. 2d 19, 27 (2004)), the decisions relied on by defendant did not involve a question of whether the trial court's jurisdiction was invoked at all. A voidness challenge may be raised at any time, in any court provided the matter has been brought before the court in a way that gives it jurisdiction. See *Flowers*, 208 Ill. 2d at 306-07. We, therefore, do not find our general statements on voidness in the *Arna* and *Harper* decisions to be controlling of the narrow issue presented in this appeal. On the contrary, our jurisdiction in this appeal is limited to considering whether the trial court properly dismissed defendant's freestanding petition to vacate for lack of jurisdiction. See *id.* Because jurisdiction was not properly established in the trial court, we cannot address the merits of defendant's petition.

¶17 CONCLUSION

¶18 We affirm the judgment of the trial court.

¶19 Affirmed.

²We note that the void sentencing rule established in *Arna*, has since been invalidated. See *People v. Castleberry*, 2015 IL 7295368, ¶ 19.