

No. 1-14-1922

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).

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. 02 MC3 004951
)	
JEREMY SCHLOSS,)	Honorable
)	Brendan J. McCooey,
Defendant-Appellant.)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held:* Circuit court's denial of defendant's section 2-1401 petition affirmed where defendant supplied an inadequate record on appeal, and the underlying judgment revoking defendant's supervision was not void.

¶ 2 Defendant Jeremy Schloss appeals *pro se* from an order of the circuit court dismissing his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)). On appeal, defendant contends that the circuit court

1-14-1922

erred in dismissing his 2-1401 petition for failing to file it in a timely manner and with due diligence where the underlying judgment revoking his supervision was void. We affirm.

¶ 3 The record shows that defendant pled guilty to driving under the influence (DUI) and was sentenced to one year of supervision on January 3, 2003. Defendant was also assessed fines and ordered to attend an alcohol treatment program. The supervision period was set to terminate on December 8, 2003. A petition to revoke defendant's supervision was filed on September 25, 2003, based on defendant's June 2003 arrest for criminal sexual abuse, and defendant's failure to provide verification of his enrollment in a Level 2 Significant Alcohol Program. On October 15, 2003, defendant's charge of criminal sexual abuse was reduced to battery, and defendant pled guilty to that charge and received a 30-day sentence in Cook County Jail. The petition to revoke supervision was withdrawn, and the matter was continued to the supervision termination date of December 8, 2003. On that date, an order entitled "Report of Court Disposition" indicated that defendant's supervision was revoked. There is no report of court proceedings for December 8, 2003, included in the record on appeal. Defendant did not file a direct appeal or any motions regarding the revocation of his supervision.

¶ 4 On May 1, 2014, defendant mailed a *pro se* section 2-1401 petition, alleging that his supervision was revoked for failing to complete the Sheriff's Work Alternative Program (SWAP), which was not part of the terms of his supervision. Defendant thus maintained that the final judgment revoking his supervision was void, and requested that his conviction be vacated and fines reimbursed. Defendant averred that he attempted to obtain the report of proceedings from the date his supervision was revoked, but was told they did not exist. In support of his

petition, defendant included his own affidavit, repeating the allegations in his petition. According to the memorandum of orders, the circuit court dismissed defendant's 2-1401 petition on May 8, 2014, for failing to file it within two years from the date of his final judgment, and for a lack of due diligence in filing. Defendant filed a motion to reconsider on May 29, 2014, which was also denied.

¶ 5 On appeal, defendant contends that the circuit court erred in dismissing his 2-1401 petition for failing to file it in a timely manner and with due diligence where the underlying judgment revoking his supervision was void and can be attacked at any time. In particular, defendant maintains that his supervision was revoked on December 8, 2003, for failing to complete SWAP, which was not part of the terms of his supervision.

¶ 6 We initially note that defendant has failed to provide a complete record on appeal. There is no report of proceedings for the December 8, 2003, proceedings revoking his supervision. Defendant, as appellant, bears the burden of presenting an adequate record to support his claim of error. *People v. Hunt*, 234 Ill. 2d 49, 58 (2009). In the absence of a complete record, we must presume that the trial court's order was in conformity with the law and had a sufficient factual basis. *People v. Lopez*, 229 Ill. 2d 322, 344 (2008), citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Any doubts that may arise from the partial record must be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. Here, because the record does not contain the December 8, 2003, proceedings, it is impossible to determine the basis upon which the trial court relied on when it revoked defendant's supervision. Therefore, we must presume that the trial court's order revoking defendant's supervision was in conformity with the law.

1-14-1922

¶ 7 In any event, the State maintains that even if the trial court's judgment constituted error, such error was merely voidable, not void, where defendant does not dispute that the trial court had personal and subject matter jurisdiction in this matter. Therefore, the State, relying upon *People v. Moran*, 2012 IL App (1st) 111165, asserts that defendant's petition, which was filed more than two years after the trial court revoked his supervision in violation of section 2-1401(c) of the Code (735 ILCS 5/2-1401(c) (West 2014)), remains untimely.

¶ 8 During the pendency of this appeal, our supreme court in *People v. Castleberry*, 2015 IL 116916, abolished the void sentence rule, which held that a circuit court which violates a particular statutory requirement when imposing a sentence acts without "inherent power," *i.e.*, without jurisdiction, thereby rendering the sentence void. *Id.* ¶¶ 13, 19. The supreme court reasoned, however, that the "inherent power" idea of jurisdiction is at odds with the grant of jurisdiction given to the circuit courts under the Illinois Constitution and cannot be reconciled with its recent decisions in *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514 (2001), *Belleville Toyota, Inc. v. Toyota Motor Sales, USA, Inc.*, 199 Ill. 2d 325 (2002), and *LVNV Funding, LLC v. Trice*, 2015 IL 116129. *Id.* ¶ 18. The supreme court explained that the circuit court is a court of general jurisdiction, which need not look to statute for its jurisdictional authority. *Id.* ¶ 19. Consequently only the most fundamental defects, *i.e.*, lack of personal jurisdiction or lack of subject matter jurisdiction, warrant declaring a judgment void. *Id.* ¶ 15.

¶ 9 Applying these principals here, we agree with the State that, assuming *arguendo*, the circuit court erred in revoking defendant's supervision, such order was voidable, not void. As noted above, defendant does not dispute that the trial court had personal and subject matter

1-14-1922

jurisdiction, and the trial court also had the authority to revoke defendant's supervision or terminate it as unsatisfactory under section 5-6-4 of the Unified Code of Corrections (730 ILCS 5/5-6-4 (West 2014)). Therefore, at most, the trial court's order revoking defendant's supervision is voidable, and defendant's petition remains untimely. See *People v. Caballero*, 179 Ill. 2d 205, 210-211 (1997) (stating that the two-year limitation mandated by section 2-1401 must be adhered to in the absence of a clear showing that the person seeking relief is under legal disability or duress or the grounds for relief are fraudulently concealed).

¶ 10 For the foregoing reasons, we affirm the circuit court's dismissal of defendant's section 2-1401 petition.

¶ 11 Affirmed.