

2016 IL App (2d) 140922-U
No. 2-14-0922
Order filed February 25, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 01-CF-1358
)	
DAVID D. WALKER,)	Honorable
)	Joseph G. McGraw,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed with prejudice defendant's section 2-1401 petition: his claim that the grand jury proceedings, which were captioned with a codefendant's name, showed a "fraud on the court" was irredeemably baseless, as the proceedings also pertained to defendant, and any irregularity in those proceedings necessarily did not render his conviction void.

¶ 2 Defendant, David D. Walker, appeals from the dismissal of his petition for relief from judgment. He asserts that the court erred in failing to recognize that the petition stated claims for a void judgment and for fraud on the court, both based on alleged irregularities in the indictment process. We hold that, taking defendant's allegations as true, he nevertheless failed to state a

basis on which relief could be granted. We therefore affirm the petition's dismissal. We further hold that, because defendant's legal theories had fundamental flaws, amendment would have been fruitless. We therefore also affirm the court's denial of defendant's motion for leave to amend the petition.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged with the first-degree murder (720 ILCS 5/9-1(a)(3) (West 2000)) of Cornell Thomas. A core question underlying this appeal is *how* defendant was charged; defendant claims that, although the charging instrument was labeled "Bill of Indictment," the implied grand jury proceeding never occurred.

¶ 5 The first document in the record is the single-sheet, two-sided bill of indictment. No other grand jury document, such as a record of the jury's impanelment, appears in the record. The bill has what appears to be the foreperson's signature. An area on the back with a heading "List of Witnesses" contains the handwritten entry, "Det. Redmond." The back has blanks for the date and is filled in to say, "returned in open court this 6th day of May, 2001." However, a file stamp has been filled in to state that the document was filed on "6/6/01." In other words, taking both dates at face value, it appears that the indictment remained unfiled for precisely a month after its return. The next document in the record is dated and file stamped June 11, 2001. On July 19, 2001, a hearing took place at which defendant's speedy-trial rights were at issue. The State told the court that it "brought a superseding bill against [codefendant] Nate Carter and a bill on the same day against David Walker on June 6th, so that's when I presented it to the Grand Jury, so I think [the bill] is wrong as far as the notation of May." The court concluded that the judge who had filled in the bill had almost certainly made a mistake, and the parties agreed that June 6, 2001, was the date of the indictment for purposes of calculating the speedy-

trial deadline for defendant.

¶ 6 Defendant had a jury trial, which resulted in a conviction on the murder charged in the indictment.

¶ 7 While defendant was awaiting sentencing, he filed a *pro se* motion seeking to dismiss the indictment. Among things, he stated, “the grand jury minutes of 6-6-’01 should of beared [sic] the names of Nate Carter and David Walker instead of, ‘In the Matter of Nathaniel Carter.’ ” Copies of the transcript elsewhere in the record show that on June 6, 2001, Robert Redmond, a detective with the Rockford police department, testified before the grand jury concerning his investigation of Thomas’s shooting death. That testimony tended to show defendant’s role in the shooting and discussed an inculpatory statement that defendant had made to police. The testimony centered on defendant, but also related to Carter’s involvement.

¶ 8 The State responded to the motion to dismiss the indictment. Concerning the transcript, it stated only that the “grand jury minutes regarding the charge of first-degree murder were turned over to the defendant prior to trial.”

¶ 9 The court heard defendant’s motion on April 25, 2003, the day of the sentencing hearing. Defendant again noted the apparent miscaptioning of the grand jury transcript. The State, represented by assistant State’s Attorney Steven Biagi, explained the caption on the transcript to the court and defendant:

“I did *** give to Mr. Walker personally on March 28th of this year, a copy of all the Grand Jury testimony that has ever been presented relating to either of his cases. The Grand Jury testimony of Robert Redmond is the sworn testimony *** that resulted in the Bill of Indictment for first[-] degree murder. The court reporter simply put on the title page that it was the matter of Nathaniel Carter. That’s an issue of administrative

ease ***.”

The court denied defendant’s motion. That same day, it sentenced him to 50 years’ imprisonment.

¶ 10 We affirmed the conviction and sentence on direct appeal. *People v. Walker*, No. 2-03-0494 (2005) (unpublished order under Supreme Court Rule 23). About a year after his sentencing, defendant filed the first in a series of petitions under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)). He abandoned the first three petitions; the court dismissed the fourth as frivolous. He filed the fifth on May 11, 2006, and the sixth on May 15, 2006. On May 22, 2006, he filed an appeal relating to the disposition of yet another petition, one under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2006)). He filed a seventh section 2-1401 petition on September 20, 2006. On December 21, 2006, the court entered an order finding that, because of the pendency of defendant’s appeal of May 22, 2006, it lacked jurisdiction to decide the pending filings. Defendant appealed that ruling; we held that the court had erred in effectively dismissing defendant’s then-pending section 2-1401 petitions. *People v. Walker*, 395 Ill. App. 3d 860, 863-64 (2009).

¶ 11 On January 3, 2011, defendant filed what he called an amended version of his May 15, 2006, section 2-1401 petition. In his first count, he claimed that, based on the lack of any record of the jury’s swearing or impanelment, no jurisdiction existed for a grand jury to indict him. He further argued that, because the conviction was based on a void indictment, it too was void. In a second count, he claimed that the State had committed fraud on the court by, as he puts it in his appellate brief, “pass[ing] off the Carter transcript as [defendant’s] transcript.”

¶ 12 The State moved to dismiss the petition as, among other things, untimely. Defendant responded, arguing in part that a voidness claim is not subject to dismissal for untimeliness. The

court denied the State's motion. The State then filed a second motion to dismiss the petition. The State first asserted that a claim of purely legal error was not cognizable under section 2-1401. Next, it asserted that defendant had failed to attach the documents needed to support the petition. Further, it asserted that defendant had completely failed to support his claim that the indictment had occurred without proper grand jury proceedings. Last, it argued that defendant's claim of "fraud on the court" was no basis for relief. The court granted the State's motion to dismiss. Defendant filed a timely motion to reconsider and for leave to file an amended petition. The proposed amended petition retained the same two counts with the same basis. A third count was based on an allegation that the grand jury had not heard evidence against defendant. It raised the transcript captioning issue and asserted that the grand jury indicted defendant 31 days before Redmond testified. A fourth count rested on the same cluster of claims. The court denied the motion, and defendant timely appealed.

¶ 13

II. ANALYSIS

¶ 14 On appeal, defendant argues that the court erred in dismissing the petition and denying him leave to amend it. Concerning his claim that his conviction was void because the grand jury was not properly impaneled or sworn, his argument focuses on an assertion that, at least at the motion-to-dismiss stage, in the absence of documentation of the grand jury's impaneling and swearing, a court must assume that neither occurred. Concerning his fraud-on-the-court count, his argument focuses on an assertion that the State deceived the court when it explained how the transcript of Redmond's testimony pertained to defendant's indictment. He further asserts that the court erred in denying him leave to amend the petition.

¶ 15 We hold that both counts were fundamentally flawed so that the dismissal was proper and that the proposed amendments, based on the same core of allegations and legal theories, would

be fruitless. Defendant's first count was irreparably flawed because a defect in the generation of the indictment cannot be the cause of a void conviction. Defendant's second count is fatally flawed because it is premised on a false conception of a grand jury term as divided into procedurally separate "matters" for separate targets. We start with defendant's argument concerning his second claim. We take the arguments out of order simply to keep the more fact-intensive discussion adjacent to our recital of the facts.

¶ 16 Our review of the dismissal is effectively *de novo*. "[A] section 2-1401 petition can present either a factual or legal challenge to a final judgment or order," and "the nature of the challenge *** is critical because it dictates the proper standard of review on appeal." *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 31. When a section 2-1401 petition raises a purely legal basis for relief from judgment, most notably when a petition asserts that the judgment is void, review of the disposition is *de novo*, as was set out in *People v. Vincent*, 226 Ill. 2d 1, 14 (2007). *Walters*, 2015 IL 117783, ¶¶ 45-49. On the other hand, where the petition is intended to bring to the court's attention factual matters that, if known to the court before entry of judgment, would have precluded entry of that judgment, the court has discretion on some points, as is explained in *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 221 (1986). *Walters*, 2015 IL 117783, ¶ 50. Defendant's first count was based on a voidness claim and its dismissal thus must receive *de novo* review. His second count is based on a factual challenge, but our analysis will show that the second count failed as a matter of law, so that the court's discretion was not in play.

¶ 17 As to the court's refusal to allow him to file a petition amended as to both counts, we review a denial of a motion for leave to amend a pleading for an abuse of discretion. *E.g., Boffa Surgical Group LLC v. Managed Healthcare Associates Ltd.*, 2015 IL App (1st) 142984, ¶ 32.

¶ 18 Defendant argues that his second count, “fraud on the court,” either stated a claim on which relief could be granted or could have been amended to do so. The gist of defendant’s fraud claim is that the State misrepresented how the transcript of Redmond’s grand jury testimony came to have Carter’s name in the caption. Defendant’s argument rests on a fundamental misunderstanding of grand jury procedure and is irreparably flawed as a result. We accept as correct the State’s explanation—that the caption was “an issue of administrative ease”—not as a matter of reliance on the State, but as a correct expression of how grand juries function.

¶ 19 Defendant asserts that Biagi deliberately deceived the court when he stated, “ ‘The court reporter simply put on the title page that it was the matter of Nathaniel Carter.’ ” According to defendant, Biagi was trying to persuade him and the court that the caption was the result of an error by the court reporter. Defendant argues that the prosecution needed to claim such an error to “pass[] off the Carter transcript as [defendant’s] transcript.”

¶ 20 Defendant’s claim of fraud fails for precisely the reason suggested by the State when, on April 25, 2003, it explained the caption to defendant: the caption was “an issue of administrative ease.” Nowhere in the statutes and rules governing the sitting of a grand jury can one find a requirement that a grand jury proceed by distinct “matters,” and nothing in those statutes and rules is a requirement that proceedings be limited to a prespecified target or targets. (This is the reason that so-called “runaway grand juries” can exist.) For this reason, grand jury transcripts are best linked to a particular defendant by their date and the content of their evidence. Given that the transcript was from June 6, 2001, the date that the court and parties agreed early on was the true date of the indictment, we can with reasonable certainty identify the transcript of Redmond’s grand jury testimony as testimony “in the matter of defendant” simply by the fact

that it was testimony that inculpated him. (Here, we also have the notation on the indictment that the witness was “Det. Redmond” to show that the transcript here was a record of the testimony that resulted in defendant’s indictment.) That the transcript received a caption “in the matter of a codefendant” is irrelevant; it is also not surprising given that the testimony also inculpated the codefendant.

¶ 21 We also reject the notion that the court should have allowed him to amend his petition to include any further form of this claim. Because the claim fundamentally lacks merit, no possible amendment could entitle defendant to relief on such a claim. We therefore reject defendant’s request to amend the judgment to allow him to amend the claim.

¶ 22 We now turn to defendant’s arguments relating to the first count of his petition, that the conviction was void as a result of a failure to impanel or swear the grand jurors. Defendant makes at least eight arguments for reversal or vacatur of that count’s dismissal. However, as we will discuss, none of those arguments can overcome the rule that irregularity in an indictment does not deprive a trial court of jurisdiction. The same principle defeats any other possible claim for relief based on the alleged irregularities. Thus, the court did not err in denying defendant’s request to amend the petition to further develop the first count and to add the third and fourth counts.

¶ 23 The best starting point for our analysis is defendant’s use of an assertion of voidness to overcome the State’s motion to dismiss the petition as untimely. His first claim can thus succeed only if a defective indictment can be the cause of a void conviction. Illinois law is clear that no such causation is possible.

¶ 24 The only requirement for a judgment not to be void is that it be entered by a court with personal and subject-matter jurisdiction. See *People v. Castleberry*, 2015 IL 116916, ¶¶ 12-19

(accepting that personal and subject-matter jurisdiction only are needed for valid judgments in criminal cases). A validly entered indictment is not necessary for a court to have jurisdiction in a criminal case. The supreme court made this clear in *People v. Benitez*, 169 Ill. 2d 245, 256 (1996), where it held that, when an indictment had effectively been generated in the State's Attorney's office and never presented to a grand jury, the trial court nevertheless had jurisdiction to convict the defendant. In *Benitez*, the State's Attorney's office unilaterally amended what had been a properly rendered indictment to charge what amounted to an entirely different offense. *Benitez*, 169 Ill. 2d at 256. Although the *Benitez* court held that the error was sufficient for reversal of the conviction on direct appeal, it was nevertheless explicit that the conviction was not void. *Benitez*, 169 Ill. 2d at 256, 259.

¶ 25 Defendant, citing *In re Custody of Ayala*, 344 Ill. App. 3d 574, 584 (2003), argues that a proper initial pleading is necessary to invoke the court's jurisdiction and that the indictment here was not proper and so not effective. We do not agree. To be sure, cases such as *Ayala* strongly suggest that *some* pleading must be before a court in order to invoke its jurisdiction and give it power to enter judgment in a matter. See *Ayala*, 344 Ill. App. 3d at 584 ("A party cannot be granted relief in the absence of corresponding pleadings."). However, *Benitez* is clear that a trial court had jurisdiction despite a proceeding initiated by an "indictment" that had never been passed on by a grand jury. We note that *Ayala* and *Benitez* are completely consonant. The concern in *Ayala* was the right of an affected party to have notice of the raising of a new claim; the decision stemmed from the court's entering a judgment with no underlying pleading to raise the claim. *Ayala*, 344 Ill. App. 3d at 584. The indictment in *Benitez*, for all of its irregular creation, put a particular charge before the court. So too with the indictment here: even if we assume its irregular entry, it nevertheless placed before the trial court a particular charge of

murder.

¶ 26 Defendant also is incorrect that *Ayala* recognizes a requirement that a legally acceptable pleading exist for there to be a justiciable matter before the court. To be sure, the existence of a justiciable issue is necessary for a court to have subject-matter jurisdiction. *E.g., In re Luis R.*, 239 Ill. 2d 295, 301 (2010). However, for a justiciable matter to exist, the only requirement is that “the alleged claim fall[] within the general class of cases that the court has the inherent power to hear and determine.” *Luis R.*, 239 Ill. 2d at 301. A murder charge falls within that general class, so subject-matter jurisdiction existed.

¶ 27 As we noted, because no possibility exists that a claim rooted in irregularity in the grand jury proceedings could result in a void conviction, defendant cannot fruitfully amend his first count. Similarly, because his proposed third and fourth counts were based on similar alleged irregularities, those counts would also be fundamentally flawed. We therefore also reject defendant’s request to modify the judgment to allow those amendments.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the dismissal of defendant’s section 2-1401 petition and further affirm the denial of his motion for leave to amend that petition. As part of our judgment, we grant the State’s request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 30 Affirmed.