2016 IL App (2d) 150586-U
No. 2-15-0586
Order filed January 29, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. PATRICK L. JOHNSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 95-CF-1385 Honorable Susan Clancy Boles, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's dismissal of defendant's petition for relief from judgment was affirmed where defendant failed to demonstrate that his extended-term sentence was void; defendant's claim that the indictment was void was barred by *res judicata* and was otherwise meritless.

¶ 2 *Pro se* defendant, Patrick L. Johnson, appeals from the trial court's dismissal of his petition for relief from judgment brought under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 20, 1997, defendant pleaded guilty to one count of first-degree murder (720 ILCS 5/9-1(a)(1) (West 1996)). In exchange for the plea, the State agreed not to request the death penalty or natural life imprisonment. As part of the plea agreement, however, defendant accepted the possibility of an extended-term sentence if the trial court found that the offense was accompanied by exceptionally brutal and heinous behavior indicative of wanton cruelty. At the sentencing hearing on December 22, 1997, the trial court made such a finding and imposed an extended-term sentence of 78 years' imprisonment. After a direct appeal and numerous unsuccessful collateral attacks on his conviction and sentence, defendant filed yet another section 2-1401 petition *pro se* on April 23, 2015.[1] Defendant argued that the extended-term portion of his sentence was void because the trial court failed to state, on-the-record, the statute pursuant to which it found that the offense was accompanied by exceptionally brutal and heinous behavior. The State filed a motion to dismiss defendant's petition, arguing that it was untimely, the sentence was not void, and that defendant's claim was barred by *res judicata*. The trial court granted the State's motion to dismiss "for the reason[s] argued therein." Defendant then timely appealed.

¶ 5 II. ANALYSIS

¶ 6 On appeal, defendant argues that the court erred in dismissing his section 2-1401 petition. We review the trial court's dismissal of defendant's section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007); *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783, ¶ 47.

[1] The record shows that since 1997, defendant has filed 15 notices of appeal. This is our eleventh written disposition.

¶ 7 Generally, a petition for relief from judgment made under section 2-1401 must be filed within two years after entry of the judgment being challenged. *People v. Gosier*, 205 Ill. 2d 198, 206 (2001). Nevertheless, a defendant may seek relief beyond the two-year limitation where the judgment being challenged is void. *Gosier*, 205 Ill. 2d at 206. Here, defendant's petition for relief from judgment was filed nearly 18 years after his sentence. Accordingly, he must demonstrate that the extended-term sentence is void and that it can be challenged at any time. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002).

¶ 8 Whether a judgment is void presents a question of jurisdiction. *People v. Castleberry*, 2015 IL 116916, ¶ 11. Jurisdiction consists of two elements: subject matter jurisdiction and personal jurisdiction. *Castleberry*, 2015 IL 116916, ¶ 12. If either subject matter or personal jurisdiction is lacking, any resulting prosecution or conviction is void and may be attacked directly or collaterally at any time. *Castleberry*, 2015 IL 116916, ¶ 11. Moreover, because a circuit court is a court of general jurisdiction, a trial court's failure to comply with a statutory requirement or prerequisite does not defeat the court's subject matter jurisdiction or "constitute a nonwaivable condition precedent to the circuit court's jurisdiction." *Castleberry*, 2015 IL 116916, ¶ 15 (quoting *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 37).

¶ 9 Here, defendant claims that his extended-term sentence is void because the trial court failed to comply with section 5-4-1(c) of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/5-4-1(c) (West 1996)) when it did not specify whether it made a finding that the murder was accompanied by exceptionally brutal or heinous behavior under section 5-5-3.2(b) (730 ILCS 5/5-5-3.2(b) (West 1996)) or section 5-8-1(a)(1)(b) (730 ILCS 5/5-8-1(a)(1)(b) (West 1996)). Defendant asserts that the court exceeded its jurisdiction, which rendered the extended-term sentence void.

¶ 10 Defendant's argument is premised on the void sentence rule, which provides that a criminal sentence which does not conform to a statutory requirement is void. *Castleberry*, 2015 IL 116916, ¶ 13. Defendant's argument fails, however, because the void sentence rule is now abolished. *Castleberry*, 2015 IL 116916, ¶ 19.[2] A trial court's failure to comply with statutory requirements does not negate its jurisdiction or render a resulting judgment void. *Castleberry*, 2015 IL 116916, ¶ 19. Thus, defendant's petition was subject to section 2-1401's two-year limitation and without a void judgment, the trial court properly dismissed defendant's petition as untimely. See 735 ILCS 5/2-1401 (West 2014).

¶ 11 Moreover, we feel compelled to note that the trial court complied with section 5-4-1(c) of the Corrections Code when it found that the murder was accompanied by exceptionally brutal and heinous behavior. Section 5-4-1(c) provides: "In imposing a sentence for a violent crime *** the trial judge shall specify on the record the particular evidence, information, factors in mitigation and aggravation or other reasons that led to his sentencing determination." 730 ILCS 5/5-4-1(c) (West 1996). In *People v. Davis*, 93 Ill. 2d 155, 162-63 (1982), however, our Supreme Court held that the word "shall" in section 5-4-1(c) is merely directory and is not a mandatory requirement that the trial court make specific findings at sentencing. *Davis*, 93 Ill. 2d at 162-63. Nevertheless, the trial court in the case at bar set forth its factual findings and explicitly noted those factors that it considered in mitigation and aggravation.

¶ 12 Finally, we reject defendant's argument that the trial court "was confused about which Code an extended term sentence could be imposed under." We will presume that the court

[2] Our Supreme Court's opinion in *Castleberry* was issued on November 19, 2015, during the pendency of this appeal. The State's brief in this appeal was filed November 23, 2015, and defendant's reply brief was filed December 3, 2015.

understood the applicable sentencing provisions. See *People v. Sweeney*, 2012 IL App (3d) 100781, ¶ 42 ("[T]he trial court is presumed to know the law and to have properly applied it."). The trial court explicitly stated that, pursuant to the plea agreement, the State was seeking the mandatory sentence for first-degree murder allowable under the circumstances, 100 years. See 730 ILCS 5/5-8-2 (West 1996). The trial court never suggested in its sentencing determination that under the circumstances, defendant could be sentenced to a term of natural life imprisonment as provided for in section 5-8-1(a)(1)(b) (730 ILCS 5/5-8-1(a)(1)(b) (West 1996)). Indeed, the court sentenced defendant to a term of 78 years' imprisonment, in conformity with section 5-5-3.2(b) (730 ILCS 5/5-5-3.2(b) (West 1996)).

¶ 13 Defendant next argues that the indictment was void because the record does not affirmatively show that the grand jury was properly sworn before it returned the indictment against him, as mandated by section 112-2 of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/112-2 (West 1994)). Thus, defendant argues, the grand jury was acting "without jurisdiction" and his conviction must be reversed. Defendant acknowledges that he did not raise this issue in the April 23, 2015, petition. Nevertheless, "an objection relating to the jurisdiction of the grand jury can be raised at any time." *People v. Bell*, 2013 IL App (3d) 120328, ¶ 6.

¶ 14 We agree with the State that review of this issue is barred by *res judicata*. The doctrine of *res judicata* prevents subsequent actions between the same parties on the same cause of action when a court of competent jurisdiction has already rendered a final judgment on the merits. *People v. Johnson*, 2015 IL App (2d) 140388, ¶ 6. Defendant raised this precise issue in his two previous appeals.[3] Those appeals also involved the denial of a section 2-1401 petition and the

[3] Defendant has also raised this issue at the trial level in numerous collateral attacks on

denial of his motion for leave to file a successive petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)). In affirming those orders, we stated: "[D]efendant contends that the grand jury was not properly sworn before it returned the indictment against him[.] *** Even if defendant is correct in his claims of error, they did not render defendant's conviction void, because any defects in the charging instrument do not deprive the trial court of jurisdiction." *People v. Johnson*, No. 2-09-0402, slip order at 4 (unpublished order under Supreme Court Rule 23). We similarly stated: "Apart from considerations of *res judicata*, we see no reason to deviate from our prior decision. *** The failure to swear the grand jury does not divest the trial court of subject-matter jurisdiction to enter a criminal conviction." *People v. Johnson*, 2015 IL App (2d) 140388, ¶ 6.

¶ 15 Nevertheless, defendant claims that this issue is not barred by *res judicata* because this appeal "does not concern the trial court's subject matter jurisdiction." Instead, defendant argues, "the purely legal question *** is simply whether the indictment is invalid in light of the fact that it was returned by an unsworn grand jury acting without jurisdiction." Defendant misses the mark.

¶ 16 A trial court's jurisdiction to enter a criminal conviction and sentence against a defendant is not conferred by information or indictment, but rather by constitutional provisions. *People v. Hughes*, 2012 IL 112817, ¶ 27. The Illinois Constitution provides that circuit courts have the power to determine all justiciable matters, defined as controversies "appropriate for review by the court ***." *Hughes*, 2012 IL 112817, ¶ 20 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002)). Thus, when a defendant argues that an

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his conviction and sentence. Indeed, the record shows that much of the language defendant uses in his briefs in this appeal have been used verbatim in those attacks.

indictment is defective, the "only consideration is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine." *Hughes*, 2012 IL 112817, ¶ 28 (quoting *In re Luis R.*, 239 Ill. 2d 295, 301 (2010)). Here, defendant was charged under the Criminal Code of 1961 with four counts of first-degree murder (720 ILCS 5/9-1(a) (West 1994)), armed robbery (720 ILCS 5/18-2(a) (West 1994)), and aggravated vehicular hijacking (720 ILCS 5/18-4(a)(2) (West 1994)) – controversies appropriate for review by the court.[4] Accordingly, as we have previously held and hold again, the trial court had jurisdiction and defendant's conviction pursuant to the indictment was valid, whether or not the grand jury was properly sworn as required by section 112-2 of the Criminal Procedure Code.

¶ 17 Even assuming that the doctrine of *res judicata* does not apply, defendant's argument is meritless for a number of reasons. Defendant's claim regarding the indictment is not properly before this court, because he did not raise it in his section 2-1401 petition and it is not void. An indictment returned by a grand jury that was not properly sworn does not result in a void judgment or conviction based on that indictment. See *Hughes*, 2012 IL 112817, ¶ 29 ("[A] defendant has a right to challenge the sufficiency of a charging instrument for failing to state an offense based on statutory and due process grounds. However, a successful challenge would render the conviction voidable not void for lack of jurisdiction."). Also, defendant bases his voidness claim on section 112-2 of the Criminal Procedure Code. He contends that the grand jury was "acting without jurisdiction or statutory power to indict." But a statutory violation is not a proper basis for declaring a resulting conviction void. See *Castleberry*, 2015 IL 116916, ¶

[4] Defendant pleaded guilty to only the first count of first-degree murder (720 ILCS 5/9-1(a)(1) (West 1996)), and the State dismissed the remaining counts.

15 ("[O]nly the most fundamental defects, *i.e.*, a lack of personal jurisdiction or subject matter jurisdiction *** warrant declaring a judgment void.").

¶ 18 Importantly, however, the indictment was valid. Although section 112-2 (725 ILCS 5/112-2 (West 1994)) mandates that the grand jury be impaneled and sworn, the Code of Criminal Procedure does not require that an indictment show its compliance with the statute. *Bell*, 2013 IL App (3d) 120328, ¶ 8. Here, the indictment appears valid on its face, as it complies with all statutory requirements: it was signed by the foreperson of the grand jury as a true bill; it states the name of the offenses and statutory provisions; it lists the nature and elements of each offense; it specifies the date and county of each offense; it lists the name of the accused; and it was returned in open court. See 725 ILCS 5/111-3(a), (b) (West 1994); see also *People v. Hall*, 1 Ill. App. 3d 792, 795 (1971) (the fact that the indictment does not recite that the grand jury was sworn or presented the indictment on oath does not render the indictment defective.). Moreover, the record contains a recently executed certificate of impanelment that explicitly states that the grand jury was sworn. Defendant does not address this certificate.

¶ 19 Finally, we note that the record does not, as defendant suggests, show that the grand jury was first sworn on July 17, 1995. Apart from the certificate of impanelment, the grand jury report indicates that on July 14, 1995, "in accordance with the Statute," the grand jury voted a true bill against defendant. The report then concludes by stating: "And this Grand Jury further reports that they have not completed their investigation and hereby are adjourned until the 21st day of July, 1995 at 9:00 a.m." Nevertheless, defendant relies on an unlabeled document from July 17, 1995, that shows that a specified list of grand jurors were convened and "severally sworn according to law as a Grand Inquest for the People of the State of Illinois[.]"[5] We will not

[5] Defendant erroneously refers to this document as the bill of exceptions, citing a 1935

assume that the grand jurors listed on this unlabeled document are the same as those who returned defendant's indictment three days earlier. Indeed, the grand jury report specifically stated that the members who returned defendant's indictment were adjourned until July 21, 1995, and neither the record nor the indictment lists the grand jury members who returned defendant's indictment. Thus, we will not presume that the grand jury was unsworn and "acting without jurisdiction" on July 14, 1995, based on this sole document.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 22 Affirmed.

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case (*People v. Link*, 282 Ill. App. 520, 526 (1935)) that quotes a bill of exceptions with similar language to a portion of the introductory paragraph in the document here.