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2016 IL App (3d) 140365-U

Order filed February 22, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0365
v.	)	Circuit No. 11-CF-912
	)	
VINCENT L. WINTERS,	)	Honorable
	)	Edward A. Burmila, Jr.,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices McDade and Schmidt concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Pursuant to *People v. Castleberry*, 2015 IL 116916, the defendant's sentence is not void and, therefore, may not be raised for the first time on appeal from his section 2-1401 pleadings.
- ¶ 2 The defendant, Vincent L. Winters, appeals from the order denying his section 2-1401 pleadings. His sole claim on appeal is that his three-year term of mandatory supervised release (MSR) is void as it does not conform to the statutory requirements. The defendant failed to raise

this argument on direct appeal or in his section 2-1401 petitions, but argues that because the sentence is void, it can be raised at any time.

¶ 3

### FACTS

¶ 4

The defendant was convicted of failing to register as a sex offender. 730 ILCS 150/3(a) (West 2010). The trial court sentenced him to an extended-term sentence of 72 months' imprisonment with a three-year term of MSR. 730 ILCS 150/10(a) (West 2010).

¶ 5

On direct appeal, this court granted the defendant's motion to vacate the order requiring that he provide a duplicate DNA marker and pay a DNA analysis fee. *People v. Winters*, No. 3-12-0493 (Nov. 27, 2013) (summary order). This was the sole issue raised on direct appeal.

¶ 6

The present appeal arises from a series of pleadings filed pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)), alleging, in part, that: (1) there was a conspiracy between the State's Attorney and the complaining officer in the defendant's case; (2) the officer gave false testimony; (3) the officer and the State's Attorney altered forms; (4) certain court reporter's transcripts were altered; (5) the State knowingly withheld exculpatory evidence; and (6) the State vindictively supplied the defendant with altered and fabricated documents. The pleadings did not challenge the three-year term of MSR. On April 20, 2014, the trial court dismissed the pleadings as being legally and factually insufficient.

¶ 7

### ANALYSIS

¶ 8

The defendant's sole argument on appeal is that the trial court erroneously sentenced him to a three-year term of MSR instead of the one-year term authorized by statute. Though the defendant recognizes that he failed to raise this issue in his direct appeal or his section 2-1401 pleadings, he argues that the term of MSR is void because it is unauthorized by statute and a void order can be raised at any time. The defendant cites *People v. Arna*, 168 Ill. 2d 107, 113 (1995),

in support of this. In response, the State asserts that *People v. Castleberry*, 2015 IL 116916, abrogated *Arna* and abolished the void judgment rule. Thus, the State concludes that defendant's MSR is not void simply because it did not conform to the guidelines within the MSR statute.

¶ 9 At the outset, we note that the defendant filed his brief on September 28, 2015. The Illinois Supreme Court decided *Castleberry* on November 19, 2015. Four days later, the State filed their brief arguing that *Castleberry* applies in this case. The defendant had the opportunity to respond to the State's use of *Castleberry*, but declined to do so.

¶ 10 In *Castleberry*, defendant was convicted of two counts of aggravated criminal sexual assault. *Id.* ¶ 3. At sentencing, the State argued that defendant was eligible for a 15-year sentencing enhancement on each of his convictions because the crimes had been committed while defendant was armed with a firearm. *Id.* The circuit court disagreed, concluding that the legislature had only intended the enhancement to be applied once in a case such as defendants'. *Id.* ¶ 4. The court, therefore, added the 15-year enhancement to only one of his sentences. *Id.* Defendant appealed, but the appellate court rejected both of his arguments. *Id.* ¶ 5. Further, the appellate court, in responding to an argument that the State had raised, said that the 15-year enhancement was a mandatory statutory requirement that had to be added to the sentence for each of the counts defendant had been convicted. *Id.* ¶ 6. Because the sentence did not conform to the statute, it was void. *Id.* The appellate court remanded the case to the circuit court for resentencing. *Id.* Defendant filed a petition for leave to appeal, which was allowed. *Id.* ¶ 7.

¶ 11 The sole issue before the supreme court was "whether the 'void sentence rule,' which states that '[a] sentence which does not conform to a statutory requirement is void' (*Arna*, 168 Ill. 2d at 113) should be abandoned." *Id.* ¶ 1. The court said that " '[w]hether a judgment is void or voidable presents a question of jurisdiction.' " *Id.* ¶ 11 (quoting *People v. Davis*, 156 Ill. 2d 149,

155 (1993)). Initially, the court noted previous holdings " 'that the power to render the particular judgment or sentence is as important an element of jurisdiction as is personal jurisdiction and subject matter jurisdiction.' " *Id.* ¶ 13 (quoting *Davis*, 156 Ill. 2d at 156 (citing *People ex rel. Rice v. Appellate Court*, 48 Ill. 2d 195, 197 (1971); *Thayer v. Village of Downers Grove*, 369 Ill. 334, 339 (1938))). Based on that, the rule developed that where a circuit court violates a statutory requirement when sentencing a defendant, it acts without jurisdiction, and therefore, the sentence imposed is void. *Id.* However, the court also noted that other decisions have concluded that circuit court jurisdiction is granted by the constitution and, therefore, failure to satisfy a certain statutory requirement does not deprive the circuit court of its jurisdiction. *Id.* ¶¶ 14-15 (citing *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514 (2001); *LVNV Funding, LLC v. Trice*, 2015 IL 116129). Therefore, only fundamental defects such as a lack of personal jurisdiction or subject matter jurisdiction warrant declaring a judgment void. *Id.* Though the cases the court cited limited their holding to civil cases, the court said that "the Illinois Constitution does not distinguish between civil and criminal cases." *Id.* ¶ 18. Ultimately, the court resolved this conflict in the case law and abolished the void sentence rule as set out in *Arna*, stating that "[b]ecause 'a circuit court is a court of general jurisdiction which need not look to the statute for its jurisdictional authority' (*Steinbrecher*, 197 Ill. 2d at 530), the void sentence rule is constitutionally unsound." *Id.* ¶ 19.

¶ 12 Here, the defendant contends that, per statute, he should have been sentenced to one-year MSR instead of the three years that he received. He did not raise this issue on direct appeal or in his pleadings pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)). Under *Castleberry*, the fact that defendant's sentence of MSR failed to conform to the statute (730 ILCS 5/5-4.5-40(1), 5-8-1(d)(3) (West 2010)) did not render the sentence void as the circuit court was

not deprived of personal or subject matter jurisdiction (See *Castleberry*, 2015 IL 116916, ¶¶ 15, 19). As the defendant does not assert that the circuit court lacked personal or subject matter jurisdiction, his sentence is not void. Therefore, the issue may not be raised for the first time on appeal from the dismissal of his section 2-1401 pleadings. See *People v. Morgan*, 385 Ill. App. 3d 771, 773 (2008) (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)) ("Generally, a defendant's argument is forfeited on appeal if it was not raised in the trial court.").

¶ 13

#### CONCLUSION

¶ 14

The judgment of the circuit court of Will County is affirmed.

¶ 15

Affirmed.