

**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).

2016 IL App (4th) 140426-U

NO. 4-14-0426

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 26, 2016

Carla Bender

4<sup>th</sup> District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
MARTEL MONTGOMERY,	)	No. 04CF328
Defendant-Appellant.	)	
	)	Honorable
	)	Patrick W. Kelley,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices Harris and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court rejected defendant's claim that a mutual mistake of law required the reformation of his guilty-plea agreement with the State.

¶ 2 In July 2013, defendant, Martel Montgomery, pleaded guilty to home invasion while armed with a firearm (720 ILCS 5/12-11(a)(3) (West 2004)). In exchange for his plea, the State agreed to dismiss three other charges and recommend that the trial court impose a 23-year prison sentence, with the understanding that defendant would have to serve at least 85% of that sentence. The court then sentenced defendant in accordance with the parties' agreement.

¶ 3 In January 2014, defendant *pro se* filed a petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2014)), arguing that a "mutual mistake" between the parties and the trial court required the reformation of his guilty-plea agreement to reflect that defendant would only have to serve at

least 50% of his 23-year prison term. Later that month, the State filed a motion to dismiss defendant's section 2-1401 petition pursuant to section 2-615 of the Procedure Code (735 ILCS 5/2-615 (West 2014)). In May 2014, the court dismissed defendant's section 2-1401 petition.

¶ 4 Defendant appeals, arguing that the trial court erred by granting the State's motion to dismiss. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. Defendant's Initial Jury Trial, Sentence, and Subsequent Appeal

¶ 7 Because the parties are familiar with the evidence presented at defendant's September 2004 jury trial, we provide only a brief synopsis to place defendant's argument in context.

¶ 8 At defendant's September 2004 jury trial, the evidence showed that defendant and two others conspired to rob a third person of money and drugs. During the March 2004 robbery, defendant struck the victim with a revolver and demanded the location of drugs and money.

When the victim did not respond, defendant kicked the victim and fired three rounds into the walls of the residence. Eventually, the victim revealed the location, and defendant obtained the money and cannabis he sought. As he left, defendant fired a fourth round into a television and told the victim, "Don't think of following me." The jury convicted defendant of armed robbery (720 ILCS 5/18-2(a) (West 2004)), conspiracy to commit armed robbery (720 ILCS 5/8-2(a) (West 2004)), aggravated discharge of a firearm (720 ILCS 5/24-1.2 (West 2004)), and home invasion while armed with a firearm (720 ILCS 5/12-11(a)(3) (West 2004)).

¶ 9 At defendant's December 2004 sentencing hearing, the trial court considered arguments on the State's motion to make a great-bodily-harm finding, which would have required defendant to serve at least 85% of any sentence the court imposed. The court ultimately granted the State's motion, finding, as follows:

"[T]he threshold question is \*\*\* did this [d]efendant cause great bodily harm or severe bodily harm to the victim. [The court] think[s] taking the totality of the circumstances into account and also the case law [the court has] read, \*\*\* [the court] believe[s] the injuries do constitute great bodily harm and severe bodily harm, so [the court is] going to make that finding here.

We have a victim who was pistol-whipped, and as a result of that had to have \*\*\* at least seven staples placed in his head in order to treat the injury.

In addition to that, after the pistol-whipping, this [d]efendant did kick the victim in the face causing bruises, hematomas, causing an additional cut to the lip which required more stitches.

So [the court] think[s] there [are] ample grounds \*\*\* to make a finding that [the court is] making here today of great bodily harm and severe bodily harm, and so [the court is] going to make that finding."

¶ 10 The trial court then merged defendant's conviction for conspiracy into his conviction for armed robbery and sentenced defendant to 21 years for home invasion, 6 years for armed robbery, and 4 years for aggravated discharge of a firearm. Based on the court's finding that severe bodily injury occurred, the court ordered that (1) the sentences imposed were to be served consecutively and (2) defendant was required to serve at least 85% of his overall 31-year sentence.

¶ 11 Defendant appealed, arguing, in pertinent part, that the trial court erred by finding that his conduct caused severe bodily injury. This court addressed and rejected that specific claim and affirmed the trial court's judgment. *People v. Montgomery*, 373 Ill. App. 3d 1104, 1121, 872 N.E.2d 403, 417-18 (2007).

¶ 12 B. Defendant's Postconviction Claim

¶ 13 In April 2008, defendant *pro se* filed a petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2010)). In May 2012, defendant's appointed counsel filed an amended postconviction petition, arguing, in pertinent part, that defendant's trial counsel was ineffective in that counsel failed to provide defendant with accurate information regarding the potential penalties the trial court could have imposed if defendant was convicted on the State's four charges, which precluded defendant's informed consideration of any guilty-plea offer by the State.

¶ 14 At a July 2013 hearing, the following exchange occurred:

"[THE STATE]: \*\*\*

This comes \*\*\* for [a] stage III evidentiary hearing on a postconviction petition \*\*\* after the State's motion to dismiss the petition \*\*\* was denied.

\*\*\* [R]ather than having an evidentiary hearing in this matter, [postconviction counsel] and [the State] have come to an agreement.

\*\*\* [T]he [State] confess[es] the petition as to the issue of ineffective assistance of counsel [f]or failing to explain \*\*\* the lawful sentencing range[.] [I]t was not explained correctly to [de-

fendant], and \*\*\* we \*\*\* ask that the court grant the petition for postconviction relief."

¶ 15 After confirming the State's representations with postconviction counsel, the trial court granted defendant's postconviction petition. Immediately thereafter, the State informed the court that the parties had reached the following guilty-plea agreement:

"Judge, in exchange for [defendant's] plea of guilty to home invasion while armed with a firearm, the [State] would then move to dismiss [the remaining three counts.] [T]he negotiated plea details would be that [defendant] would serve [23] years in the Illinois Department of Corrections [(DOC)], to be followed by [3] years mandatory supervised release [(MSR)]. The [23] years \*\*\* would be served at the statutory calculation of 85%."

¶ 16 After confirming with postconviction counsel and defendant that the State had accurately described the terms of their agreement, the following exchange occurred:

"THE COURT: Do you understand you will be pleading guilty to the offense of home invasion with a firearm? As charged it is a Class X felony, carries potentially from [6] to [30] years in [DOC], to be followed by [3] years [MSR], and fines of up to \$85,000. You will be subject to serve 85% of the sentence you \*\*\* receive.

Do you understand that?

[DEFENDANT]: Yes, sir."

¶ 17 Shortly thereafter, the State presented the following factual basis:

"If this case were to go to trial the evidence would show that on or about \*\*\* March 19, 2004, [defendant] committed the offense of home invasion, in that he, a person who was not a peace officer acting in the line of duty, knowingly and without legal authority entered the dwelling place of another \*\*\* when he knew or had reason to know that [the victim] was present at the time, and that while armed with a firearm used force or threatened the imminent use of force upon [the victim] in his dwelling place."

¶ 18 After admonishing defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 2012), the trial court accepted defendant's guilty plea and sentenced him in accordance with the parties' agreement.

¶ 19 C. Defendant's Petition for Relief From Judgment

¶ 20 In January 2014, defendant *pro se* filed a petition for relief from judgment under section 2-1401 of the Procedure Code, arguing that a "mutual mistake" between the parties and the trial court required the reformation of his guilty-plea agreement to reflect that defendant would have to serve only 50% of his 23-year prison term. Specifically, defendant contended that under section 3-6-3(a)(2)(iii) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3(a)(2)(iii) (West 2012)), the trial court was required to find that his conduct resulted in great bodily harm to the victim before it could mandate he serve 85% of his 23-year sentence for home invasion while armed with a firearm.

¶ 21 Later that month, the State filed a motion to dismiss defendant's section 2-1401 petition pursuant to section 2-615 of the Procedure Code. In May 2014, the trial court granted the State's motion to dismiss, reasoning, as follows:

"This court heard substantial evidence at defendant's jury trial of defendant inflicting great bodily harm upon the victim in this case. Simply because the original conviction was vacated and a subsequent guilty plea was entered, does not remove this evidence of great bodily harm from the court's consideration. The court found a factual basis exists for the plea, and the court today finds there is a factual basis for the plea and conviction that was entered in this matter."

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Defendant argues that the trial court erred by granting the State's motion to dismiss. Specifically, defendant contends that his "entire plea agreement, not just his sentence, is void, and therefore unenforceable, because it was premised on a mutual mistake of law." We disagree.

¶ 25 A. The Purpose of a Section 2-1401 Petition  
and the Standard of Review

¶ 26 Section 2-1401 of the Procedure Code establishes a comprehensive procedure by which final orders and judgments may be vacated or modified more than 30 days after their entry. 735 ILCS 5/2-1401 (West 2014); *Pekin Insurance Co. v. Campbell*, 2015 IL App (4th) 140955, ¶ 28, 44 N.E.3d 1103. "Relief under section 2-1401 is predicated upon proof, by a preponderance of evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *People v. Vincent*, 226 Ill. 2d 1, 7-8, 871 N.E.2d 17, 22 (2007). "We review a dismissal of a section 2-1401 petition for failure to state a claim for relief *de novo*." *People v.*

*McChriston*, 2014 IL 115310, ¶ 6, 4 N.E.3d 29.

¶ 27 B. Defendant's Claim

¶ 28 Prior to reaching the merits of defendant's overarching claim of error, we first quote the applicable statutes to provide context.

¶ 29 1. *Sentencing Credit*

¶ 30 Section 3-6-3 of the Unified Code is entitled, "Rules and Regulations for Sentence Credit." 730 ILCS 5/3-6-3 (West 2014). Section 3-6-3(a)(2.1) of the Unified Code provides, as follows:

"For all offenses other than those enumerated \*\*\*, the rules and regulations shall provide that a prisoner who is serving a term of imprisonment shall receive one day of sentence credit for each day of his or her sentence of imprisonment \*\*\*. Each day of sentence credit shall reduce by one day the prisoner's period of imprisonment \*\*\*." 730 ILCS 5/3-6-3(a)(2.1) (West 2014).

¶ 31 Section 5-4-1 of the Unified Code provides guidance concerning the proper procedures employed during a sentencing hearing. 730 ILCS 5/5-4-1 (West 2014). Section 5-4-1(c-1) of the Unified Code provides, as follows:

"In imposing a sentence for the offense of \*\*\* home invasion \*\*\*, the trial judge shall make a finding as to whether the conduct leading to conviction for the offense resulted in great bodily harm to a victim, and shall enter that finding and the basis for that finding in the record." 730 ILCS 5/5-4-1(c-1) (West 2014).

¶ 32 Section 3-6-3(a)(2)(iii) of the Unified Code provides, as follows:



tual basis under Illinois Supreme Court Rule 402 (eff. Jul. 1, 2012)—which governs guilty-plea proceedings—is to provide sufficient facts from which the trial court "could reasonably reach the conclusion that the defendant actually committed the acts with the intent (if any) required to constitute the offense to which the defendant is pleading guilty." (Internal quotation marks omitted.) *People v. Banks*, 213 Ill. App. 3d 205, 211, 571 N.E.2d 935, 939 (1991). However, when, as here, the trial judge who presided over defendant's July 2013 guilty-plea hearing also presided over defendant's September 2004 jury trial, no reasons exists to require the State to provide a factual basis.

¶ 36 Stripped to its fundamental premise, defendant's mutual-mistake argument presents, at best, an interesting academic exercise, which is inapplicable under the facts presented. That academic exercise would be to speculate about a situation in which the trial court and both counsel mistakenly believed that *all* convictions of home invasion required a defendant to serve 85% of his sentence, not just those convictions in which the court found the conduct leading to conviction resulted in great bodily harm to a victim. This academic exercise does not apply to this case because everyone involved already knew when defendant pleaded guilty that his conduct resulted in great bodily harm to the victim. Indeed, the same trial judge had previously explicitly made that finding, and, as noted earlier, this court had affirmed. Thus, the best that can be said of defendant's argument is that the trial court should have so stated again when defendant pleaded guilty, or at least stated that it was taking judicial notice of the previous jury trial and sentencing. We agree, but this technical omission on these facts falls far short of what defendant must show to prevail on a section 2-1401 petition.

¶ 37 Under the circumstances presented, it would have been a better practice for the trial court to (1) make a specific finding that defendant's conduct caused great bodily harm to the

victim or (2) take judicial notice of the proceedings at defendant's December 2004 trial. However, the court clarified in its January 2014 order, which dismissed defendant's section 2-1401 petition, that it relied on those findings when the court accepted defendant's July 2013 guilty plea.

Therefore, we reject defendant's claim that the court was under any mistaken belief.

¶ 38 In this case, defendant received exactly what he bargained for—namely, a 23-year sentence that required him to serve at least 85% of that sentence. Accordingly, we reject defendant's argument to the contrary.

¶ 39 III. CONCLUSION

¶ 40 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 41 Affirmed.