

**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) 140532-U

NO. 4-14-0532

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

May 3, 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.	)	Champaign County
ANTHONY J. NEWBILL,	)	No. 04CF2071
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.  
Justices Turner and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err by dismissing defendant's section 2-1401 petition as lacking merit and untimely.

¶ 2 In August 2005, following a mistrial due to a hung jury, a jury found defendant, Anthony J. Newbill, guilty of robbery (720 ILCS 5/18-1 (West 2004)). In October 2005, the trial court sentenced defendant, as a Class X offender, to 30 years' imprisonment. On direct appeal, this court affirmed his conviction and sentence in *People v. Newbill*, 374 Ill. App. 3d 847, 873 N.E.2d 408 (2007). In June 2008, defendant filed a *pro se* postconviction petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2008)), which the trial court summarily dismissed and this court affirmed. *People v. Newbill*, No. 4-08-0575 (March 10, 2010) (unpublished order under Supreme Court Rule 23). In May 2014, defendant filed a "petition for relief [from] judgment, order[,] and sentence" under the Code of Civil Procedure

(Code) (735 ILCS 5/2-1401 (West 2014)), which the trial court dismissed on the State's motion as untimely and patently without merit. Defendant appealed. The office of the State Appellate Defender (OSAD) has moved to withdraw as counsel on appeal on the grounds no meritorious issues can be raised in this appeal. We agree and affirm.

¶ 3

## I. BACKGROUND

¶ 4 The facts of this case are detailed in this court's orders in *Newbill*, 374 Ill. App. 3d 847, 873 N.E.2d 408, and *Newbill*, No. 4-08-0575 (unpublished order under Supreme Court Rule 23). Those facts will be reiterated here only so far as necessary to our decision.

¶ 5 Defendant filed the instant petition in May 2014. Defendant argued relief was appropriate because (1) the trial court failed to properly admonish the jury of the instructions embodied in Illinois Supreme Court Rule 431(b), (2) (eff. July 1, 2012) the court failed to *sua sponte* poll the jury, and (3) defendant's guilt was not proved beyond a reasonable doubt. On May 21, 2014, the State filed a motion to dismiss, arguing defendant's arguments were barred by a prior judgment, the petition was untimely, and defendant failed to state a claim upon which relief could be granted. The trial court dismissed defendant's petition, concluding "[t]he defendant's petition [was] not only time barred but [was] also frivolous, patently without merit[,] and [did not] state a cause of action."

¶ 6 In June 2014, defendant filed his notice of appeal from the trial court's denial of his petition to modify his sentence and amend the sentencing judgment. OSAD filed a motion for leave to withdraw as defendant's counsel on appeal, citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and asserting it had thoroughly reviewed the record and concluded any request for review would be without merit. The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by

January 27, 2016, but defendant has not done so. After examining the record, we grant OSAD's motion and affirm the trial court's dismissal of defendant's petition.

¶ 7

## II. ANALYSIS

¶ 8 Defendant, on appeal, argues the trial court erred by dismissing his section 2-1401 petition for relief from judgment. We review the trial court's dismissal of defendant's section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18, 871 N.E.2d 17, 28 (2007).

¶ 9 Defendant's section 2-1401 petition was filed approximately nine years after his conviction and sentence, well outside the two-year limitations period. Defendant argues his sentence is "void" and contends he can raise his claim for the first time on appeal from dismissal of his petition because a voidness challenge can be raised at any time under *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104, 776 N.E.2d 195, 202 (2002). Defendant argues further, for those same reasons, his claims were excused from the general rules applicable to section 2-1401 petitions. We disagree.

¶ 10 Section 2-1401 of the Code provides a mechanism authorizing a trial court to vacate or modify a final order or judgment in civil and criminal proceedings. *People v. Thompson*, 2015 IL 118151, ¶ 28, 43 N.E.3d 984. A section 2-1401 petition must be filed no earlier than 30 days from entry of the final order but not more than 2 years after entry. 735 ILCS 5/2-1401(a), (c) (West 2014). The only exception to the two-year deadline occurs when a petition challenges a void judgment. *Thompson*, 2015 IL 118151, ¶ 29, 43 N.E.3d 984. The first voidness challenge, and the only one relevant to the current facts, alleges a judgment is void because the court entered judgment without personal or subject matter jurisdiction. *Id.* ¶ 31, (citing *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38, 32 N.E.3d 553). The second voidness challenge involves a challenge to a final judgment based on a facially unconstitutional

statute void *ab initio* and is not relevant to our current discussion. *Id.* ¶ 32. A final voidness challenge occurs, historically, when a sentence does not conform to the applicable sentencing statute. *Id.* ¶ 33. This challenge was based on the "void sentence rule" from *People v. Arna*, 168 Ill. 2d 107, 658 N.E.2d 445 (1995), "holding that a sentence that does not conform to a statutory requirement is void." *Thompson*, 2015 IL 118151, ¶ 33, 43 N.E.3d 984. The void sentence rule was recently abolished by *People v. Castleberry*, 2015 IL 116916, 43 N.E.3d 932. A judgment will be void post-*Castleberry* if entered without personal or subject matter jurisdiction. *Id.* ¶ 19. A circuit court is a court of general jurisdiction, and 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." *Id.* ¶ 15 (quoting *LVNV Funding, LLC*, 2015 IL 116129, ¶ 37, 32 N.E.3d 553). Subject matter jurisdiction refers to a court's power "to hear and determine cases of the general class to which the proceeding in question belongs." (Internal quotation marks omitted.) *Id.* ¶ 12. Personal jurisdiction refers to the court's power "to bring a person into its adjudicative process." (Internal quotation marks omitted.) *Id.*; see Black's Law Dictionary 870 (8th ed. 2004) (personal jurisdiction is defined as "[a] court's power to bring a person into its adjudicative process.").

¶ 11 Defendant, in his petition, failed to argue why his sentence was void and should be vacated. A showing of voidness was required as defendant's petition was filed nine years after entry of the judgment, outside the two-year bar. *Thompson*, 2015 IL 118151, ¶ 29, 43 N.E.3d 984. His arguments challenge the sufficiency of the evidence, admonishments, and jury polling, not whether the court had subject matter and personal jurisdiction to enter the sentence. A section 2-1401 petition was an improper vehicle in which to raise defendant's particular arguments.

¶ 12

### III. CONCLUSION

¶ 13 In sum, we grant OSAD's motion to withdraw as counsel on appeal pursuant to *Finley* and affirm the trial court's dismissal of defendant's section 2-1401 petition.

¶ 14 Affirmed.