2017 IL App (2d) 161015-U
No. 2-16-1015
Order filed December 21, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Respondent-Appellee, v. WAYNE A. ZIELINSKI, Defendant-Petitioner-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 93-CF-1193 Honorable Christopher R. Stride, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Hudson and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court was correct to dismiss defendant's section 2-1401 petition; the allegations in the petition failed to show that judgment of commitment was void rather than voidable.

¶ 2 This case presents a collateral challenge to the trial court's jurisdiction to order indefinite civil commitment under the Sexually Dangerous Persons Act (the Act) (see Ill. Rev. Stat. 1991, ch. 38, ¶ 105 *et seq.* (now 725 ILCS 205/1 *et seq.* (West 2016))). As we explain, in light of the Illinois Supreme Court's recent decision in *People v. Castleberry*, 2015 IL 116916, that challenge here is unsuccessful.

¶ 3 In 1993, defendant, Wayne A. Zielinski, then age 21, was charged with multiple sex offenses involving two child victims in two sets of indictments. Case No. 93-CF-1193 charged Zielinski with sexual assault of a three-year-old family member, and case No. 93-CF-1198 charged Zielinski with sexual assault of a five-year-old family member. In case No. 93-CF-1198, Zielinski ultimately entered a negotiated plea and was sentenced to a single 8-year prison term for criminal sexual assault.

¶ 4 In case No. 93-CF-1193, Zielinski initially entered a partially negotiated plea whereby he pled guilty to count II of the indictment (as amended), which charged him with criminal sexual assault, and the remaining charges were dismissed. After Zielinski entered his plea, but before he was sentenced, the State filed a petition seeking to have Zielinski committed as a sexually dangerous person. The trial court (Judge Raymond J. McKoski) granted the State leave to file its commitment petition and also granted Zielinski leave to withdraw his guilty plea. Subsequently, the parties proceeded to a stipulated bench trial, after which Zielinski was adjudged a sexually dangerous person by the trial court and committed to the custody of the Department of Corrections for an indefinite term under the Act.

¶ 5 In 2016, Zielinski filed a petition for relief under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)), in which he contended that the 1993 commitment order was "void" on multiple grounds. (A petition claiming a judgment is merely voidable must be filed within two years of the judgment under 735 ILCS 5/2-1401(c) (West 2016), but a petition seeking relief from a void judgment may be filed at any time. 735 ILCS 5/2-1401(f) (West 2016).) In response, the State filed a motion to dismiss Zielinski's petition. After a hearing, the trial court (Judge Christopher R. Stride) issued a 12-page decision in which the court

carefully analyzed and rejected each of Zielinski's arguments, and determined that the commitment order was not void. Zielinski appeals and we affirm.

¶ 6 The question of whether a judgment is void or voidable presents a question of law, which we review *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007); see also *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 47. Before this court, Zielinski only raises two of the contentions he pressed before the trial court. His first argument is that the commitment order was void because there is not a signed, file-stamped copy of the State's commitment petition in the record. His second argument is that he had "already pled guilty" on count II in case No. 93-CF-1193 when the State was given leave to file its commitment petition under the Act.

¶ 7 As Zielinski notes, the filing of a commitment petition is a statutory prerequisite to civil commitment under section 3 of the Act (725 ILCS 205/3 (West 2016)), and a court cannot enter a criminal sentence for the same offense because an offender's civil commitment is in lieu of his or her criminal sentence (*id.*). See also *People v. Galba*, 273 Ill. App. 3d 95, 97 (3d Dist. 1995) (noting that under section 3 of the Act, "a defendant cannot be committed as a sexually dangerous person and simultaneously criminally punished for the same underlying acts giving rise to the finding of dangerousness"). Thus, in either instance, according to Zielinski, his commitment order was "entered without statutory authority."

¶ 8 As the trial court noted, it appears Zielinski's claims fail on their own terms. As to his first point, the question is not whether there is a "certified" commitment petition in the record, but rather whether a petition was filed. There is ample evidence that a petition was in fact filed, including transcripts wherein the trial court: granted the State leave to file the petition in case No. 93-CF-1193, permitted Zielinski to withdraw his initial blind guilty plea in case No. 93-CF-

1193, arraigned Zielinski on the petition, and held a stipulated bench trial after which the court adjudicated Zielinski a sexually dangerous person. As to Zielinski's second point, despite having initially pled guilty in case No. 93-CF-1193, once the State filed its commitment petition Zielinski was given leave to withdraw his plea. Thus, he was never "committed as a sexually dangerous person and simultaneously criminally punished for the same underlying acts" (*Galba*, 273 Ill. App. 3d at 97) for the simple reason that he was never criminally punished in case No. 93-CF-1193.

¶ 9 But more importantly, as the State correctly argues, even if Zielinski's contentions had merit, they would only render the commitment order voidable, not void. As the State notes, Zielinski's arguments rely on the premise that an order can be void because it was "entered without statutory authority." This argument once had currency under the "inherent power" or statutory approach to jurisdiction under which, if a party or the court failed to comply with a statutory prerequisite—say, a civil pleading requirement, or a criminal sentencing term—that failure seemingly divested the court of its jurisdiction, *i.e.*, its "inherent authority," to have rendered the judgment. Thus, the resulting order was said to be void and could be challenged at any time under section 2-1401 of the Code of Civil Procedure.

¶ 10 Our supreme court has since repudiated this statutory approach to jurisdiction, first in a series of decisions in civil cases, and then finally in criminal cases with its decision in *People v. Castleberry*, 2015 IL 116916. Under this constitutional approach to jurisdiction, our supreme court has explained, the jurisdiction of circuit courts flows from the state constitution of 1970, which grants circuit courts with exceptions not relevant here "original jurisdiction of all justiciable matters ***." Ill. Const. 1970, art. VI, § 9. This grant of judicial authority stands in contrast to federal courts, which are not provided for in the United States Constitution, and

whose limited jurisdiction is dependent on Congressional statutes. See generally *United States v. Hall*, 98 U.S. 343, 345 (1878). But now in Illinois, because the circuit court's jurisdiction is of constitutional dimension, it cannot be constrained by a statute, or by noncompliance with a statute. See *Castleberry*, 2015 IL 116916, ¶ 15 (quoting *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶¶ 30-38).

¶ 11 After *Castleberry*, then, there are only two circumstances where a judgment will be deemed void: (1) where the judgment was entered by a court that lacked personal or subject-matter jurisdiction, or (2) where the judgment was based on a statute that is facially unconstitutional and is void *ab initio*. See *People v. Price*, 2016 IL 118613, ¶ 31 (citing *People v. Thompson*, 2015 IL 118151, ¶¶ 31-33). Both of those circumstances are clear-cut matters. Here, Zielinski made no allegation of true voidness along either of those lines, and we note that even if he had it would have been futile. The trial court acquired jurisdiction over Zielinski's person when he appeared before the court, and the trial court had jurisdiction over the subject matter because both criminal and civil commitment cases fall within the general class of cases heard by the circuit court. See *In re Luis R.*, 239 Ill. 2d 295, 300-06 (2010); *People v. Sharifpour*, 402 Ill. App. 3d 100, 121-25 (2010). Moreover, to date, the Act has withstood multiple constitutional challenges and has not been declared facially unconstitutional. See, *e.g.*, *Allen v. Illinois*, 478 U.S. 364, 370-74 (1986); *People v. Pembrock*, 62 Ill. 2d 317, 323 (1976).

¶ 12 The State is correct that now, after *Castleberry*, Zielinski has alleged, at most, that the commitment order was voidable not void. Accordingly, we affirm the trial court's judgment dismissing Zielinski's section 2-1401(f) petition, albeit on different grounds. As noted, the trial court undertook a thorough review of the merits of each of Zielinski's claims. As we have just explained, however, the court could have just as easily rejected Zielinski's claims as untimely.

That is, because Zielinski's petition lacked an allegation of true voidness—*i.e.*, that the judgment was entered by a court lacking jurisdiction, or that the judgment was based on a facially unconstitutional statute—Zielinski had two years to raise his claims in a collateral challenge to his initial commitment. See 735 ILCS 5/2-1401(c). Zielinski was committed in 1993, and he filed his section 2-1401 petition in 2014. Accordingly, because Zielinski's petition lacked an allegation of true voidness, his petition came roughly 19 years too late.

¶ 13 In sum, the trial court was correct to dismiss Zielinski's section 2-1401 petition. Therefore, we affirm the judgment of the Circuit Court of Lake County.

¶ 14 Affirmed.