

NOTICE
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2018 IL App (5th) 150330-U

NO. 5-15-0330

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Marion County.
)	
v.)	No. 11-CF-84
)	
LAMONT L. BRINSON,)	Honorable
)	Mark W. Stedelin,
Defendant-Appellant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Barberis and Justice Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant failed to allege facts entitling him to relief under section 2-1401 of the Code of Civil Procedure, and any argument to the contrary would lack merit, appointed appellate counsel is granted leave to withdraw, and the judgment dismissing his section 2-1401 petition is affirmed.

¶ 2 Defendant, Lamont L. Brinson, appeals from the circuit court's dismissal of his *pro se* petition for relief from judgment, which he filed pursuant to section 2-1401 of the Code of Civil Procedure. See 735 ILCS 5/2-1401 (West 2010). Defendant's court-appointed attorney on appeal, the Office of the State Appellate Defender (OSAD), has filed a *Finley* motion to withdraw as counsel, on the ground that this appeal lacks merit, along with a brief in support of the motion. See *Pennsylvania v. Finley*, 481 U.S. 551

(1987). Defendant has filed a short, written response to OSAD's motion. This court has examined OSAD's motion and brief, defendant's response, and the entire record on appeal. For the reasons stated below, this court grants OSAD leave to withdraw as counsel and affirms the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 An information filed in March 2011 charged defendant with aggravated domestic battery. The information alleged that defendant, in committing a domestic battery in violation of section 12-3.2 of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/12-3.2 (West 2010)), strangled a family member, intentionally impeding her normal breathing by applying pressure to her neck, all in violation of section 12-3.3(a-5) of the Criminal Code (*id.* § 12-3.3(a-5)).

¶ 5 On July 5 and 6, 2011, a jury trial was held. The complainant, Danielle Pope, testified that on March 13, 2011, she went to defendant's house in order to wash her clothes in defendant's washing machine. Pope and defendant had been romantically involved, but their relationship was stormy, to say the least. On two prior occasions, according to Pope, defendant had threatened her with a gun, and once he had choked her with a baseball bat.

¶ 6 Pope was at defendant's house for much of the day, March 13. Later in the day, still at defendant's house, Pope told defendant that she could not "take" or "deal with" him anymore, and they started to argue. During the argument, defendant yelled at Pope. He approached her, and she walked backwards, away from him, not wanting to take her eyes off of him. While walking backwards, Pope tripped over defendant's weights. She

fell onto her back. Defendant "jumped on top of [her]," put his bare hands around her neck, and choked her. After "a minute," defendant stopped choking her and ripped off his shirt, but then he started choking her again, "even harder." Pope could not breathe and could not free herself. She thought she would die. Suddenly, defendant stopped choking her and stood up. Pope did not know why he stopped. She immediately tried to get up from the floor, but she fell back. A bit later, she was able to lift herself from the floor. However, defendant then displayed his gun and told Pope to go to his bedroom. She complied. Pope lay on defendant's bed, crying hysterically, as he sat nearby, holding his gun. Eventually, she fell asleep.

¶ 7 The next morning, March 14, Pope woke up. Her "whole body" hurt. Defendant was sleeping next to her. She quietly walked out of the bedroom and to the bathroom, where she used defendant's phone to call her cousin. She informed the cousin of her situation. Shortly thereafter, police arrived at defendant's house.

¶ 8 Defendant's 13-year-old son and 11-year-old daughter testified that they had witnessed the prior incident in which defendant strangled Pope with a baseball bat. The son also testified that on one occasion, he saw defendant pull out a gun and "almost hit [Pope] with it."

¶ 9 Defendant, testifying on his own behalf, denied Pope's allegations that he was violent toward her on March 13 or 14, 2011. In great detail, defendant described the events of March 13, 2011; according to him, Pope was away from his house for most of that day, and the two did not argue, at least not with any intensity. Pope did trip over his

weight set, defendant testified, but her tripping and falling were due to darkness, and not to anything that he did.

¶ 10 The jury found defendant guilty as charged.

¶ 11 On August 12, 2011, the court denied defendant's motion for a new trial. During a hearing in aggravation and mitigation, the State noted that the presentence investigation report (PSI) stated that defendant had been "diagnosed with a primary medical impairment of mental retardation but with a secondary impairment of schizophrenic, paranoia and other psychotic disorders," but he was not "receiving any treatment apparently for schizophrenia, paranoia or any other psychotic disorder that he apparently suffers from." As for defendant's criminal history, it included numerous felony convictions that made him eligible for Class X sentencing. See 730 ILCS 5/5-4.5-95(b) (West 2010) (conditions for sentencing Class 1 or Class 2 felons as Class X offenders). The court found that defendant, who was 45 years old at the time of sentencing, was "a danger to everyone around [him]" and that he did not have any rehabilitative potential. The court sentenced defendant to imprisonment for 30 years.

¶ 12 In March 2013, this court affirmed the judgment of conviction. This court rejected defendant's argument that his 30-year prison sentence was excessive, which was his sole argument on direct appeal. See *People v. Brinson*, 2013 IL App (5th) 110448-U.

¶ 13 On August 29, 2012, while the direct appeal was still pending, defendant filed the *pro se* section 2-1401 petition for relief from judgment that is the subject of this appeal. The petition was not a model of clarity, but defendant seemed to present two claims. In his first claim, defendant faulted the circuit court for not conducting a fitness hearing in

this case. Defendant alleged that on November 22, 2006, Judge McHaney presided at a hearing in a misdemeanor case against defendant, and at that time the judge "became aware of [defendant's] mental fitness issues." According to defendant, Judge McHaney was "reminded of [defendant's] mental disability" by the contents of the PSI in the instant case, which was prepared in advance of the August 12, 2011, sentencing hearing. In his second claim, defendant alleged that the information failed to comply with section 111-3 of the Code of Criminal Procedure of 1963 (see 725 ILCS 5/111-3 (West 2010) (form of charge)), and was therefore "fatally defective," due to the absence of any allegation that defendant intentionally or knowingly caused great bodily harm or permanent disability or disfigurement.

¶ 14 (Defendant also asserted that the judgment of conviction was "invalid, a nullity, void + a rank + abusive violation of due process of law." A void order or judgment can be attacked under section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2010)). However, defendant merely asserted that the judgment of conviction was void. He did not even begin to develop or explain this assertion.)

¶ 15 In his prayer for relief, defendant sought a retrospective fitness hearing and vacatur of the judgment of conviction.

¶ 16 Also on August 29, 2012, defendant filed a *pro se* petition for postconviction relief. The circuit court appointed postconviction counsel, who eventually filed an amended postconviction petition on behalf of defendant. After many delays, the court held an evidentiary hearing on the amended postconviction petition and denied the

petition. Defendant did not appeal from the denial order, and the postconviction petition is not a subject of the instant appeal.

¶ 17 On December 5, 2012, the State filed a motion to dismiss defendant's *pro se* petition for relief from judgment. The State noted, *inter alia*, that defendant did not include any new or additional facts in that petition.

¶ 18 On July 8, 2015, the court held a hearing on the State's motion to dismiss defendant's *pro se* section 2-1401 petition for relief from judgment. The State asked the court to consider the defendant's brief from the direct appeal, but otherwise stood on its motion to dismiss. Defendant argued that he should have been charged with "a simple domestic" since "[Pope] only had scratches and a bruise and they gave her aspirin and Tylenol and sent her home." Defendant argued that his trial attorney was ineffective for failing to seek the dismissal of the charge. Trial counsel was also ineffective, defendant argued, for failing to investigate defendant's mental-health history. He stated that his attorney had seen "paperwork" from mental-health facilities and was aware that defendant had been prescribed psychotropic drugs, but the attorney failed to conduct an "investigation" that would have revealed the specific drugs that defendant had been prescribed. Defendant also stated that he was a "high risk adult that's on disability or physical or mental disability [through the Social Security Administration]" who "should have been protected" from Pope, who was "very violent" and "[took] advantage of [him]." During his trial, defendant continued, he was receiving the wrong drugs and therefore he "had no idea what was going on" and "just sat there and let [his] attorney railroad [him] into this." Defendant also stated that he should have had a fitness hearing,

and the trial judge and jury should have been aware of his mental problems. The court took the matter under advisement.

¶ 19 On July 14, 2015, the circuit court entered a written order dismissing the section 2-1401 petition for relief from judgment. The court found that defendant's factual allegations were not of a type that would entitle him to relief under section 2-1401. Defendant filed a timely notice of appeal from the order, thus perfecting the instant appeal.

¶ 20 ANALYSIS

¶ 21 Section 2-1401 provides the statutory procedure by which a final order or judgment may be vacated more than 30 days after entry. *People v. Haynes*, 192 Ill. 2d 437, 460 (2000). Section 2-1401 provides a civil remedy that extends to both civil and criminal cases. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). Accordingly, proceedings under section 2-1401 are subject to the usual rules of civil procedure and "[t]he petition is subject to dismissal for want of legal or factual sufficiency." *Id.*

¶ 22 A section 2-1401 petitioner is required to allege facts that establish a meritorious claim or defense and that would have precluded entry of the original judgment if the circuit court had been made aware of them. *People v. Pinkonsly*, 207 Ill. 2d 555, 566 (2003); *Physicians Insurance Exchange v. Jennings*, 316 Ill. App. 3d 443, 457 (2000). A court considering a section 2-1401 petition must make a determination as to whether facts existed at the time of trial that were unknown to the court and would have precluded entry of the original judgment. *Pinkonsly*, 207 Ill. 2d at 566. The petitioner must also

establish that he was diligent in discovering the claim or defense and in filing the petition. *Vincent*, 226 Ill. 2d at 7-8; *Jennings*, 316 Ill. App. 3d at 457.

¶ 23 Here, defendant did not allege any facts that were unknown to the circuit court at the time the original judgment was entered. All of the facts that he mentioned were previously known; he merely argued that those facts should have led to a different result. Such allegations cannot entitle a section 2-1401 petitioner to relief. The circuit court had no choice but to dismiss the petition.

¶ 24 Finally, this court notes that an allegedly defective information or indictment does not divest the circuit court of jurisdiction over a criminal case. The Illinois Constitution gives circuit courts the authority to hear criminal cases. See Ill. Const. 1970, art. VI, § 9; *People v. Castleberry*, 2015 IL 116916, ¶ 18. A valid charging instrument is not a jurisdictional prerequisite to a conviction. See *People v. Benitez*, 169 Ill. 2d 245, 256 (1996). Moreover, the information in this case was not defective. It properly charged defendant with aggravated domestic battery under section 12-3.3(a-5) of the Criminal Code (720 ILCS 5/12-3.3(a-5) (West 2010)). This subsection of the aggravated-domestic-battery statute includes strangulation as an element of the offense, and this element was duly alleged in the information. Contrary to defendant's assertion in his section 2-1401 petition, there was no need to allege great bodily harm, or permanent disability or disfigurement, as these results were not elements of the offense as charged.

¶ 25 CONCLUSION

¶ 26 Defendant did not allege any facts that would entitle him to section 2-1401 relief. Therefore, his section 2-1401 petition was properly dismissed. Any argument to the

contrary would have no merit. Therefore, OSAD is granted leave to withdraw as counsel, and the judgment of the circuit court is affirmed.

¶ 27 Motion granted; judgment affirmed.